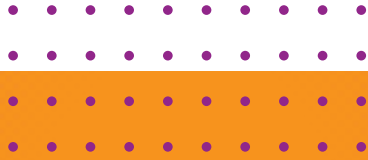




सत्यमेव जयते

This analysis has been conducted under the aegis of the Juvenile Justice Committee (JJC) of Rajasthan High Court



Response to Violence, Abuse and Exploitation of Children in Rajasthan: An Analysis



Enfold Proactive Health Trust
November 2022



In Collaboration with
Resource Institute for
Human Rights (RIHR)
and UNICEF-Rajasthan





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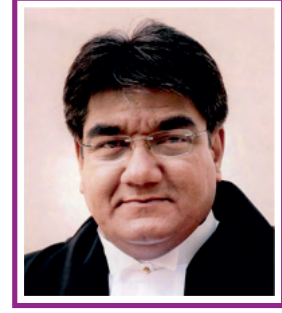
About Enfold

Enfold Proactive Health Trust, a non-profit based in Bengaluru founded in 2001, aims to address gender-based violence and sexual abuse, through education, awareness, rehabilitative support for survivors of child sexual abuse, and restorative processes with children in schools and the juvenile justice system. The organisation works towards creating safe spaces, where all genders are equally valued and respected, every child is safe, and people of all genders feel empowered and accountable. This is achieved through strong field-based engagement, and direct work with children and adults in colleges, schools, in Child Care Institutions, and the community. Enfold builds the capacity of functionaries of the criminal justice system and child protection system, medical practitioners, social workers, counsellors, and media personnel. Enfold works with State Governments across the country, conducting research studies, providing training and technical support to authorities and functionaries under the child protection system, offering recommendations for the effective implementation of child laws, and supporting the formulation of Child Safeguarding Policies and their effective implementation. Enfold's Prevention team has been working towards addressing and preventing child sexual abuse across multiple platforms through age-appropriate, value-based Personal Safety and Comprehensive Sexuality Education programs. Children are supported to learn to recognize abuse, and exercise agency in order to act against and report sexual abuse to safe adults. The team also supports schools in setting up robust systems for effective prevention and response to child sexual abuse. The Rehabilitation and Reintegration team provides a range of support services to children and families who report sexual abuse, right from the time of reporting of the abuse, through the various procedures in the criminal justice system, focusing on enabling child survivors of sexual abuse to live with dignity, access justice and healing. The Restorative Practices team has been actively using Restorative Practices to build and strengthen community, impart social and emotional learning, address misbehavior or harm, and repair relationships within the Juvenile Justice System and in schools.

For more information, visit <http://enfoldindia.org/>



MESSAGE



Vijay Bishnoi
Judge, Rajasthan High Court, Jodhpur

The Government of India has enacted various laws and framed policies for safeguarding children in the country. This Secondary Data Analysis has been conducted by Enfold Trust-Proactive Health Trust and Resource Institute for Human Rights (RIHR) supported by UNICEF- Rajasthan under the aegis of Juvenile Justice Committee (JJC) of Rajasthan High Court with a view to gather evidence on implementing various special laws relating to children.

This analysis explores the impact of the COVID-19 pandemic on reporting of cases of violence against children in Rajasthan, the extent to which child-friendly procedure under the Protection of Children from Sexual Offences Act (POCSO Act) are adhered to by different stakeholders, the manner in which cases are disposed of by the courts in Rajasthan and the challenges faced by stakeholders in carrying out their duty to protect child victims under the POCSO Act.

I hope that this Report will serve as a helpful resource for all those who wish to better understand and implement the Child Protection System in Rajasthan and the impact of the pandemic on children affected.

I am also hopeful that the findings and recommendations made in this report will support all stakeholders to come together to develop a roadmap to strengthen protection of children in Rajasthan and resolve the difficulties being faced in Child Protection System in Rajasthan.

I appreciate the initiative taken by Enfold Trust, the Resource Institute for Human Rights and UNICEF-Rajasthan and for undertaking this analysis.

My best wishes to the entire team for putting together this Report

Justice Vijay Bishnoi
Chairperson, Juvenile Justice Committee



MESSAGE



Inderjeet Singh
Judge, Rajasthan High Court

The Criminal Law of the country is basis for punishing public wrongs committed by an individual as well as to act as a deterrent to the society. It deals with various categories of crimes and respective punishments. One of such categories is sexual offences against children. Thus, true punishing the offender is an important factor, however, it can only help as deterrent but what can be said about the child victims who have mercilessly been affected by such heinous crime.

Enfold Trust Proactive Health Trust and Resource Institute for Human Rights with support of UNICEF, Rajasthan and under the aegis of Juvenile Justice Committee {JJC} of this court, with a view to gathering evidence on the working of various laws relating to children, have conducted this secondary data analysis.

In the recent years, the country has seen a massive pandemic and its impact on the Child Protection system is to be seen in the coming days. Therefore, with a view to understand responsiveness of Child Protection system post pandemic, this secondary data analysis would help in future analysis.

This report has succeeded in laying down the trends of violence against children in the year 2019 and 2020. The Report accurately discusses the reality of crimes against children and also provides practical recommendations to facilitate protection of children.

I am confident that the Report will be an important tool for all stakeholders to strengthen the child protection system in the State of Rajasthan.

I extend my heartiest congratulations and best wishes to the entire team for preparing the Report.

Justice Inderjeet Singh
Member, Juvenile Justice Committee



MESSAGE

Dr. Samit Sharma, I.A.S.
Secretary to Government

Social Justice & Empowerment Department
Government of Rajasthan



Childhood and adolescence are periods of great physical and psychological changes and bring with it, its own set of challenges. This is also a period when children are vulnerable to violence, be it physical, emotional, or sexual violence. This may be exacerbated by factors such as poverty, abuse, trauma or domestic violence. The Covid-19 pandemic brought forth its own set of challenges for children and has impacted children's health, nutrition, families, education, physical and mental well-being and financial conditions. Thus, the pandemic has disrupted the childhood and adolescence of many and has placed children at greater risk of violence. These may have devastating and life-changing consequences for children.

About 43% of Rajasthan's population consists of children below the age of 18 years. Given the large population of children in the state and their specific, vital needs, the Department for Child Rights, Government of Rajasthan, was set up to engage with issues related to children in need of care and protection and children in conflict with the law. The Department's activities ensure proper care, protection, development, treatment and social reintegration of children by adopting a child-friendly approach and keeping in mind children's best interests. In furtherance of this, the Department provides ICPS, Child Protection Services, sponsorship and foster care services, among others. Additionally, given the crushing impact of the Covid-19 pandemic on the lives of children, the Rajasthan Government has also announced financial relief for children who lost their parents to the virus.

In view of the large proportion of children in Rajasthan, it is commendable that Enfold Proactive Health Trust, Bengaluru, UNICEF-Rajasthan and the Resource Institute for Human Rights (RIHR) have undertaken this analysis to understand the incidence of violence against children in Rajasthan, the response of the child protection system to the same and the specific impact of the Covid-19 pandemic on the children in Rajasthan. The analysis throws up some important findings- that cases registered on child labour, child sexual abuse and child trafficking have reduced in 2020, that sexual abuse against boys is underreported, that a significant proportion of POCSO cases end in acquittals as the victims do not testify against the accused, and that in a majority of cases, the accused is known to the victim. The analysis recommends some steps which may be taken to remedy these issues and I am certain that these suggestions will help in combating violence against children and will strengthen the child protection system in Rajasthan.

In conclusion, I extend my heartfelt congratulations to Enfold, UNICEF-Rajasthan, and RIHR for their efforts towards gathering and analyzing data from Rajasthan and for bringing to life this report. The findings and recommendations of this analysis will help in carrying forward the Department's objective of upholding the best interests of children.

Dr. Samit Sharma
Secretary to Government, Social Justice and
Empowerment Department, Government of Rajasthan



Isabelle Bardem Sévédé
Chief, UNICEF Office for Rajasthan

India's Constitution recognizes the vulnerability of children and empowers to frame special laws for children. It also enjoins them to ensure that childhood is protected from violence, abuse and exploitation. While much has been achieved by strengthening the legal framework for child protection in the last two decades, violence against children continues to be a serious concern. The vast legal framework on child rights is not adequately backed by periodic and systematic data and analysis which can help monitor and improve the implementation of these laws.

In light of the above backdrop, Enfold Proactive Health Trust in partnership with Resource Institute for Human Rights (RIHR) and with UNICEF's support conducted an analysis of the available secondary data in Rajasthan, to explore the nature of reported cases of offenses against children as well as the constraints in the response system.

Enfold team brought out this report through a consultative process with key stakeholders and an analysis of the secondary data such as National Crime Record Bureau (NCRB) data, and Protection Of Children from Sexual Offences Act (POCSO) Special Court judgments from Rajasthan.

The report accurately discusses the reality of reported cases and highlights existing gaps and challenges in the system related to crimes against children. It provides practical recommendations to facilitate strengthening of child protection system in the state. It also lays down an array of legal tools that need to be used and polished to serve the common goal of ensuring the promotion of child rights and the reduction of violence, abuse and exploitation. I congratulate the Department for Child Rights (DCR), RIHR and Enfold team for successfully conducting this important analysis.



Isabelle Bardem Sévédé,
Chief, UNICEF Office for Rajasthan



Dr. Sangeeta Saksena Co-Founder, Enfold Proactive Health Trust

Childhood and adolescence are pivotal phases of one's life and yet, the changes brought about by this period are characterized by stigma, information asymmetry, and a lack of access to essential services. It was this issue which propelled Dr. Shaibya Saldanha and I to establish the Enfold Proactive Health Trust in 2001. We were alarmed by the occurrence of preventable health problems in progressively younger age groups. We were also struck by the fact that modern healthcare practices seemed to be oriented towards the curative aspects of health rather than the preventive aspects, although it made more sense for the system to be preventive and promotive in nature. We also observed that many students were deprived of adequate education in sexuality and personal safety due to a lack of funds in schools. Therefore, we set up the Enfold Proactive Health Trust with a view to improving child and adolescent health.

In the years since, Enfold has grown and has succeeded in its mission of empowering children and adolescents to exercise their autonomy, their right to live with safety and dignity, and to respect the rights of others. Enfold's activities are divided across multiple teams, each working in tandem to support and empower children and adolescents. Although each team tackles different aspects of the child protection system and uses a different approach, our ultimate goal is to help build a system where children would be treated with dignity and respect.

The Research team's analysis on violence against children in Rajasthan, the response of the child protection system, and the impact of the Covid-19 pandemic on children, is just another step towards fulfilling the above goal. The report concludes that barriers and stereotypes that deter the disclosure of sexual violence still persist, that in many cases victims are reluctant to testify against the perpetrators, that greater convergence between all the stakeholders in the child protection system is the need of the hour, and that there is a need for better compliance with child-friendly procedures and practices which safeguard the dignity of the child in Indian courtrooms and hospitals. The report also lays down stakeholder-specific measures which may be taken to address the shortcomings within the system. It is an important step forward in understanding the gaps within the system, how they have been exacerbated due to the pandemic, and the role of each stakeholder in remedying the gaps.

I hope that this report, through its findings, serves as a useful tool in promoting and furthering children's dignity and best interests. I congratulate the research team, UNICEF-Rajasthan, and the Resource Institute for Human Rights for their work on this timely study. I am confident that this study will be an important milestone in Enfold's journey towards creating a fair and just society for children.



Dr. Sangeeta Saksena
Co-Founder, Enfold Proactive Health Trust



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List of Abbreviations

ADCP	Assistant Director Child Protection
AHTU	Anti-Human Trafficking Unit
CALPRA	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
CCI	Child Care Institution
CICL	Child in conflict with the law
CJM	Chief Judicial Magistrate
CMPO	Child Marriage Prohibition Officer
Cr.P.C	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
FIR	First Information Report
FSL	Forensic Science Laboratory
ICP	Individual Care Plan
IO	Investigating Officer
IPC	Indian Penal Code, 1860
IT Act	Information Technology Act, 2000
JJB	Juvenile Justice Board
OH	Observation Home
NCRB	National Crime Records Bureau
NFHS	National Family Health Survey
NGO	Non-governmental Organization
PCMA	Prohibition of Child Marriage Act, 2006
POCSO	Protection of Children from Sexual Offences Act, 2012
PP	Public Prosecutor
RSLSA	Rajasthan State Legal Services Authority
SC/ST Act	Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989
SDM	Sub-Divisional Magistrate
SIR	Social Investigation Report
SJPU	Special Juvenile Police Unit
SLL	Special Local Laws
SP	Superintendent of Police
WCD	Ministry of Women and Child Development

Introduction

The Indian Constitution recognises the vulnerability of children and empowers the State to frame special laws for children and enjoins them to ensure that childhood is protected from exploitation. Special legislations such as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALPRA), Prohibition of Child Marriage Act, 2006 (PCMA), Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) recognise specific offences against children, and stipulate procedures and rehabilitative measures. The JJ Act, 2015, for instance, provides an overarching framework to ensure children's care, protection, treatment and rehabilitation, particularly when they are in conflict with the law or in need of State care and protection. It establishes authorities such as the Child Welfare Committee, and agencies such as the Special Juvenile Police Unit, and District Child Protection Unit, to ensure an effective and inter-sectoral response to children in difficult circumstances.

Despite high estimates of child labour,¹ child marriages,² and other offences against children in Rajasthan, data based on Crime in India, 2019 revealed that very few cases were registered under special legislations such as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (48 cases) and the Prohibition of Child Marriage Act, 2006 (19 cases).³ Further, since March 2020, India, like all countries around the world, was hit by the COVID-19 pandemic resulting in school closures, migrations, and loss of livelihood on an unprecedented scale. Existing evidence on the impact of pandemics and epidemics on child protection shows how vulnerabilities are exacerbated, and children are exposed to multiple risks.⁴ Evidence on the manner in which the criminal justice system and the child protection system have dealt with cases, as well as the challenges faced by

stakeholders will help strengthen the response to violence against children and in turn increase the confidence of children and families in the justice system.

It was in this backdrop that an exploratory analysis was undertaken by Enfold Proactive Health Trust in partnership with RIHR and UNICEF Rajasthan. The analysis was conducted between July to December 2021. The specific objectives were to examine the nature of cases of violence against children in Rajasthan, the adherence to child-friendly procedures by different stakeholders, the nature of disposal of cases by courts, and the challenges faced by stakeholders. The impact of COVID-19 on the reporting of violence against children, and the response of the police, CWCs, courts, and other authorities was also inquired into.

The analysis is based on :


- Data on crimes against children published by National Crimes Record Bureau and data presented in reply to nine questions pertaining to offences against children raised in the Rajasthan Legislative Assembly.
- Analysis of 375 judgments downloaded from e-Courts, under the POCSO Act and decided in 2019 and 2020, from Bhilwara, Chittorgarh, Dausa, Pratapgarh, Sri Ganganagar.
- Analysis of 46 cases downloaded from e-courts, under JJ Act, 2015 and CALPRA and decided in 2019 and 2020, from Banswara, Baran, Bharatpur, Bundi, Dungarpur, Jaipur, Jaipur district, Jaisalmer, Jalore, Jhunjhunu, Jodhpur Metro, Karauli, Kota, Rajsamand, Sawai Madhopur, Sikar, and Sirohi.
- Interactions with 35 stakeholders such as JJB Members, CWC Members, Public Prosecutors, Assistant Director Child Protection, Childline, civil society organisations and CWC, from seven districts.

¹ILO (n.d.), Child Labour in India, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_557089.pdf

²National Family Health Survey -5 (2019-2021), State Fact Sheet - Rajasthan, p.3, http://rchiips.org/nfhs/NFHS-5_FCTS/Rajasthan.pdf

³National Crime Records Bureau, Crimes In India 2019 Vol.1, Table 4A.2(ii), p. 315

⁴UNICEF, Impacts of Pandemics and Epidemics on Child Protection: Lessons learned from a rapid review in the context of COVID-19, Innocenti Working Papers no. 2020-05, 2020, <https://www.unicef-irc.org/publications/1104-working-paper-impacts-of-pandemics-and-epidemics-on-child-protection-lessons-learned.html>

- 
- Analysis of 21 case files of CWCs from five districts.
 - Data on compensation disbursed in POCSO cases in 2019-2020 shared by Rajasthan State Legal Services Authority.

The report highlights the profile of the victims, complainants, and accused, and examines the legal provisions invoked, nature of testimony of the child victims, compensation, and the outcomes in court in cases of sexual offences against children and child labour. It also provides insights on crimes against children reported in Rajasthan and the impact of COVID-19 on reporting. The report also presents key highlights of the measures taken by the CWC to respond to concerns of child protection, and areas of the functioning of CWCs that needs to be strengthened. It identifies challenges and gaps in the response to violence against children, and proposes practical measures and reforms to strengthen a convergent and responsive approach to violence against children. The recommendations offer a roadmap for the consideration of the State Government, judiciary, and specific stakeholders such as Special Courts, CWCs, police, DCPU, among others.

Note: The percentages in this report are rounded off to the closest whole number, and therefore in some instances the sum of percentages is not exactly 100%.

Summary of Key Findings

Highlights of Reporting of Crimes against Children during (2019-2020)

According to data from the National Crime Records Bureau (NCRB) and responses to questions asked in the Rajasthan Legislative Assembly:

- As per *Crime in India* (NCRB) Reported incidents of crimes against children in Rajasthan dropped by 11% from 7385 cases in 2019 to 6850 cases in 2020.
- Reporting of kidnapping cases declined from 3132 to 2769 (12%), cases under the POCSO Act declined from 596 to 244 (59%), under the JJ Act from 596 to 538 (10%), under CALPRA from 48 to 30 (38%) and child marriage from 19 to 3 (84%)¹.
- **Pendency rate** of cases of crimes against children in court **increased from 89.3% to 92%**².
- Conviction rates in offences against children increased from 54% in 2019 to 59% in 2020³.
- **Child Labour** : The number of children rescued from child labour declined from 1371 children in 2019 to 1280 in 2020⁴. A total of 1401 boys (95%) and 69 girls (5%) were rescued in 2019-20. While the number of child labourers from Rajasthan rescued increased from 691 in 2019 to 779 in 2020, the number of child labourers from other States rescued in Rajasthan fell from 680 in 2019 to 501 in 2020. There were only 5 convictions in 2019 and 4 convictions in 2020⁵.
- **Child and Bonded Labour** : 1097 bonded child labourers were released between 2018 and 2020 in Rajasthan⁶. Of this, only 266 children (24%) received an amount of Rs. 20,000 each under the Bonded Labour Rehabilitation Scheme, 2016 of the Central Government. **Although the percentage of child labourers and bonded child labourers rescued increased by 12% from 2018 to 2020, it dropped by 25% from 2019 to 2020.**
- **Child Trafficking for Labour** : The number of trafficked children rescued increased by 27% from 248 in 2019 to 316 in 2020⁷. A total of 299 boys (90%) and 33 girls (10%) were rescued in 2019-20. The number of **in-state boys rescued increased** from 100 in 2019 to 199 in 2020 while the number of in-state girls rescued increased from 7 in 2019 to 26 in 2020. The percentage of **out-of-state boys rescued fell** from 123 in 2019 to 87 in 2020 while the percentage of out-of-state girls rescued fell from 18 girls in 2019 to 4 girls in 2020. The total number of FIRs registered under Section 370 of IPC reduced by 15% from 71 cases in 2019 to 60 cases in 2020⁸. This was starkly different from the numbers given in *Crime in India, 2019 and 2020*, as per which the number of reported incidents in Rajasthan under Section 370 was 16 in 2019 and 17 in 2020.
- **Child Sexual Abuse** : The number of case of sexual abuse against girls below 18 years that were registered across the state decreased by 11% from 2073 in 2019 to 1850 in 2020⁹.

¹Crime in India, 2019, Vol. 1., p. 298, Table 4A.2(i) & Crime in India, 2020, Vol. 1., p.310, Table 4A.2(ii)

²Ibid.

³National Crime Records Bureau, Crime In India 2019 Vol.1, Table 4A.5,p. 333 & Crime In India 2020 Vol.1, Table 4A.5,p. 337

⁴Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 7641

⁵Ibid.

⁶Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 3703

⁷Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 7641(Performa B)

⁸Ibid.

⁹Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 2857

Judicial Response in Cases under the POCSO Act, 2012

(Based on analysis of 375 judgments of Special Courts from Bhilwara, Chittorgarh, Dausa, Pratapgarh, and Sri Ganganagar from 2019-2020 and interactions with 35 stakeholders).

- **Profile of the victim :** In 99% of the cases the victims were female and in only three cases (1%) the victim was male. In 11% cases, the victim stated that she was married to the accused. Based on age cited in school records and birth certificates, in 31% cases victims were in the age group 13-15 years and in 50% cases victims were in the age group of 16-18 years. In 18% cases victims were below 12 years.
- **Profile of the Informants :** In 66% cases, the victim's parents were the informants and the victim was the informant in 18% cases. In 16% cases, the informant was the victim's sibling or a relative such as a cousin, an uncle or aunt or a grandparent or father-in-law.
- **Profile of the accused :** Out of a total of 577 accused persons, 95% were male and 5% were female. Notably, female accused persons were only charged with abetment. **In 83% cases, the accused was known to the victim** and the accused was a stranger in only 5% cases. In 12% cases, the relationship was unclear or not specified. Of the cases in which the accused was known to the victim, the accused was an acquaintance in 30% cases, co-villager in 21% cases, boyfriend in 14% cases, relative in 11% cases, and neighbour in 9% cases. Other accused persons included husbands in 7% cases and friends in 7% cases.
- **Nature of Charges :** Accused was charged under the POCSO Act in all 375 cases, under the IPC in 372 cases (99%), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST Act) in 42 cases and IT Act in 3 cases.
 - ▶ Penetrative/aggravated penetrative sexual offences charges were seen in 73% cases, sexual/ aggravated sexual assault in 23% cases and sexual harassment in 7% cases.
 - ▶ In 81 cases (22%), aggravating charges such as where the victim was pregnant, was below 12 years, or accused was a relative, were not applied.
 - ▶ In **65% cases**, along with POCSO charges, the accused was charged **with kidnapping /abduction charges** under Sections 359 to 374 of the IPC. Kidnapping-related provisions were also included in 77% cases in which the accused was charged with a penetrative sexual offence under the POCSO Act.
- **Compliance with Child-friendly Procedures :** Victim's identity was disclosed in **52% cases** in contravention of Section 33(7), POCSO Act through identification of the parents, siblings, or relatives of the victim or the victim's school. In **34% cases** there was a mention of the child being **directly cross-examined by the defence** in violation of Section 33(2), POCSO Act. Although Section 40 POCSO Act entitles victims to the assistance of a legal counsel of their choice or a Legal Aid Lawyer, reference to the victim's advocate was found in only 2% cases.
- **Nature of outcomes :** The conviction rate was 21% in 2019 and 25% in 2020.
- **Nature of testimony :** The victim testified against the accused in 49% cases, did not testify against the accused in 46% cases and did not appear before the court in 4% cases. The victim was declared hostile in 43% cases. The accused was acquitted in 98% cases in which the victim did not testify against him. Of the 184 cases in which the victim testified against the accused, the accused was convicted in 77 cases (42%) and in 83 cases (45%), the victim's testimony was considered unreliable by the Special Courts.
- **Link between testimony, outcome, and identity of the accused :** Among the 312 cases where the accused was known to the victim, the accused was acquitted in 77% cases. Majority of the victims did not testify in cases in which there was a proximate relationship with the accused such as where the accused was the father, boyfriend, or friend. Consequently, 91% cases in which the accused was a friend, 81% cases in which he was a boyfriend and all cases in which the accused was father, ended in an acquittal.

- **Outcomes in romantic cases :** Romantic cases i.e. cases in which the victim expressly admitted to being in a relationship with the accused constituted 16% of the total cases. The victim did not testify against the accused in 70% of romantic cases and testified against him in 31% cases. The acquittal rate was much higher in romantic cases and stood at 88%.
- **Age-determination :** The victim's minority was established in 37% cases, not established in 26% cases, not determined by the court in 36% cases, and was unclear in 0.8% cases. The victim's age was contested by the accused in 32% cases. All cases in which the minority could not be established, resulted in an acquittal under the POCSO Act.
- **Time taken to dispose of cases from FIR till judgment :** 290 cases (77%) were disposed of in 2019, and 85 cases (23%) were disposed of in 2020. The drop in disposal in 2020 could be due to the impact of COVID-19 on the trials. Overall, 24% cases were disposed of within a year. The average time taken to dispose of a case from FIR was 2 years and 5 months. The conviction rate was the lowest i.e. 15% in cases that took between 4 to 5 years to be disposed of, followed by 17% for cases that were disposed within a year. Victims did not testify against the accused in 68% cases that were disposed of within a year.
- **Medical Evidence :** Medical evidence was on record in 47% cases. In some cases, the medical examination report included references to the two-finger test, and conclusions that the victim was "habituated to sex" and that there were no signs of rape or sexual assault, contrary to the normative standards on contents of a medical examination report.
- **Factors that influenced convictions and acquittals :** Significant factors that were observable in cases that ended in conviction included **the victim's cogent testimony against the accused (93%), establishment of the victim's minority (99%) and the presence of corroborative medical evidence (53%)**. Of the 292 cases that ended in acquittal, in 58% cases, the victim did not testify against the accused, in 34% cases, the victim's minority could not be established by the prosecution, and in 22% cases, a compromise had been reached.
- **Sentencing Pattern :** In 43 cases (52%) upon conviction the Special Court awarded the minimum sentence under the POCSO Act. Imposition of the maximum sentence was an exception and was awarded in only 11 cases under the POCSO Act. Life imprisonment was imposed in six cases under the POCSO Act.
- **Trends in compensation by Special Courts :** The Special Court considered compensation in 91 cases (24%). Contrary to Section 33(8), POCSO Act and Rule 9, POCSO Rules, 2020, the Special Court determined the quantum of compensation in only 2% cases, and instead made a recommendation to the DLSA in 98% cases for determining the quantum under the Victim Compensation Scheme 2011 and Section 357A, Cr.P.C. There was no reference to interim compensation being given in any case in the judgments of the Special Courts.
- **Compensation disbursed by RLSA :** Compensation was disbursed by DLSAs in 618 cases in 2019 and 603 cases in 2020. The total amount disbursed in 2019-2020 was Rs. 3,161,22,500. Average compensation given per case was Rs. 2,19,900 in 2019-20, and was Rs. 2,09,900 in 2019, and Rs. 2,29,000 in 2020, Interim compensation was given in 306 cases across all districts in 2019 and 239 cases in 2020. It was not clear whether this amount was given based on an order of the Special Courts.

Judicial Response to Child and Adolescent Labour

(Highlights based on 46 judgments from 16 districts on child and adolescent labour)

- **Profile of Victims :** There were 65 victims of which only one was female. As per available age data, 25 victims were below 14 years and 29 were between 14 years to 18 years.
- **Profile of Informants :** Informants were predominantly the **AHTU** (14 cases) and the **police** (12 cases).
- **Profile of Accused Persons :** There were 63 accused persons, of which only one accused person was female. The accused was allegedly the **employer** in 44 cases (94%) and a contractor in two cases (4%).
- **Sites of work** included eating establishments (12), tea thelas or shops (3), tailoring shops (3), melting of jewellery (3), vehicle service centres and garage (3).
- **Nature of Charges :** In 41 cases (89.13%), the accused were tried under Section 79, JJ Act, 2015 (exploitation of a child employee) or Section 26, JJ Act, 2000. In eight of these cases, the accused persons were additionally tried under Sections 75, JJ Act, 2015 (cruelty). The accused persons were charged under CALPRA in 17 cases, primarily under Section 3, CALPRA, 1986 read with Section 14 (penalties) in 12 cases. The most invoked provision under the IPC was Section 374 (unlawful compulsory labour), which was applied in 32 cases, followed by Section 370 (trafficking of person) which was applied in 10 cases along with Section 374.
- **Nature of Outcomes :** Majority of the cases i.e, 27 cases (58.7%) ended in an acquittal. Convictions were recorded in 19 cases (41.3%), of which in 17 cases the accused pleaded guilty. In 10 cases, the court observed that the accused was motivated by the Lok Adalat proceedings and willingly accepted guilt.
- **Nature of Testimony :** Of the 46 cases, in 19 cases, the victim did not testify against the accused and in 18 of these cases the victim was declared hostile and in the remaining 27 cases, the child was not produced before the court for evidence.
- **Nature of sentence :** In the 19 cases that resulted in a conviction, **none of the accused were sentenced to imprisonment** and no fines were imposed. They were all released on probation under Section 4, Probation of Offenders Act after submitting a bond of one to three years that they would maintain peace and keep good behaviour, not reoffend, and appear and receive sentence when called upon during such period by the court. **Except for one case, no compensation was given to any child in cases which ended in conviction.** Instead, the accused were directed to pay costs of prosecution ranging from Rs.1000 - Rs.10,000.
- **Disposal Time :** The time taken for disposal from the date of registration of the complaint till the final judgment was available in 29 cases. **The average disposal time of cases was three years and four months** with 20 cases (69% cases) being disposed of within 2-4 years.
- Factors that contributed towards acquittals included **victim being declared hostile** (18 cases); **failure to include an independent witness by AHTU/police during search** (12 cases) even though the shop or establishment was in a busy area; **failure to collect ownership documents of the establishment** (9 cases) and thus no evidence to establish that the accused was the occupier; **failure to produce the victim and their parents in court** (8 cases); **failure to include site photos** (4 cases); **failure to establish age of the victim** (3 cases).

I. Highlights of Reporting of Crimes against Children during COVID




1.1 Incidence of Crimes, Disposal Status and Conviction Rates

Although several stakeholders shared that the pandemic has resulted in an increase in cases of child marriage and sexual violence against children, as well as child labour due to school closure, this was not reflected in the reporting of cases. According to Crime in India 2020, the number of reported crimes against children under the Indian Penal Code (IPC) and Special Local Laws (SLL) at the all-India level, increased by a mere 4% from 141760 in 2018 to 148090 in 2019, and declined by 13% to 128531 in 2020. In Rajasthan, it increased by 43% from 5150 in 2018 to 7385 in 2019⁵ and decreased by 11% to 6580 in 2020. This decline during the pandemic year can be due to difficulties in reporting cases due to travel restrictions and pressures on police, Childline and other agencies, as was mentioned by stakeholders. According to

Crime in India data, the rate of total reported crimes against children per lakh of population declined from 25.9 in 2019⁶ to 23.4 in 2020 in Rajasthan.⁷ However, the decline in crime rate is actually much higher because the 2019 crime rate calculation used the mid-2014 projected child population of Rajasthan which was 284.5 lakhs but in 2020, the Census 2011 total child population of 281.4 lakhs was used to calculate the crime rate.⁸

COVID-19 impacted trials and this has resulted in an increase in pendency of cases from 89% in 2019 to 92% in 2020 in Rajasthan. The conviction rate in Rajasthan for offences against children is higher than the all-India figure and an increase was seen in the rate of conviction from 54% in 2019 to 59% in 2020.

Table 1.1 : Incidence of crimes, disposal status and conviction rate of crimes against children in Rajasthan and India (2019-2020)

	Reported crime against children 		Percentage cases pending disposal by court 		Conviction rate 	
	2019	2020	2019	2020	2019	2020
Rajasthan	7385	6580 ↓ 11%	89%	92% ↑ 3%	54%	59% ↑ 5%
India	148090	128531 ↓ 13%	90%	95% ↑ 5%	35%	45% ↑ 10%

⁵National Crime Records Bureau, Crime In India 2020 Vol.1, Table 4A.5,p. 337, <https://ncrb.gov.in/en/Crime-in-India-2020>

⁶National Crime Records Bureau, Crime In India 2019 Vol.1, Table 4A.1,p. 297,<https://ncrb.gov.in/en/crime-india-2019-0>

⁷National Crime Records Bureau, Crime In India 2020 Vol.1, Table 4A.1, p.301

⁸This is one of the limitations of using the crime rate data from the NCRB.

Stakeholders' views on impact of COVID-19 on response to violence against children

- As the police were involved in enforcing COVID-19 related restrictions, this affected reporting and prompt response in cases of violence against children.
- Owing to restrictions on movement, Childline's staff in many districts and civil society organisations faced difficulties in reaching out to children, and intervening in cases of child marriage.
- Pendency has increased before courts, CWCs and JJBs as their functioning was drastically curtailed due to the lockdown.
- Online interactions of CWCs with children in CCIs or in their homes resulted in limited information.
- Inspections of CCIs were affected as COVID-19 protocols had to be adhered to.

In terms of reporting of specific offences, the impact of the pandemic was evident as there was an overall decline in the number of reported cases of kidnapping, under the POCSO Act, CALPRA, JJ Act, and PCMA in 2020:

- Kidnapping cases in Rajasthan declined by 12% from 3132 in 2019, to 2769 in 2020. At the national level it declined by 21% from 69075 in 2019 to 54785 in 2020.⁹
- POCSO cases sharply declined by 59% from 596 in 2019 to 244 cases in 2020 in Rajasthan and by 0.2% from 47335 to 47221 at the national level.¹⁰
- The number of reported cases under the JJ Act declined by 10% from 596 in 2019 to 538 cases in 2020 in Rajasthan and by 13% from 1968 to 1713 in India.¹¹

- The number of reported cases under CALPRA declined by 38% both in Rajasthan and at the all-India level between from 2019 to 2020. In Rajasthan, there was a drop from 48 cases in 2019 to 30 cases in 2020 and all-India figures show a drop from 770 cases in 2019 to 476 cases in 2020.¹² Based on the response in the Rajasthan Legislative Assembly to Unstarred Question 7641, there was an 11% decrease in FIRs filed from 674 cases in 2019 to 602 cases in 2020 in cases of child labour. A possible explanation of the difference in figures from the Crime in India reports is that the assembly data does not classify cases based on CALPRA and may include cases of child labour lodged under the IPC and the JJ Act, 2015 as well.
- Child marriage cases declined by 84% from 19 in 2019 to 3 in 2020 in Rajasthan but increased by 50% from 525 to 785 at the all-India level.¹³
- The total number of cases where FIR was registered under Section 370 of IPC for the purpose of child labour reduced by 15% from 71 cases in 2019 to 60 cases in 2020.¹⁴ However, this was different from the overall numbers given in Crime in India, 2019 and 2020, as per which the number of reported incidents in Rajasthan under Section 370 was 16 in 2019 and 17 in 2020.

⁹National Crime Records Bureau, Crime in India 2019 Vol. 1, Table 4A.1, p.350-369 & Crime in India 2020 Vol. 1, Table 4A.1, p.302-321.

¹⁰Ibid.

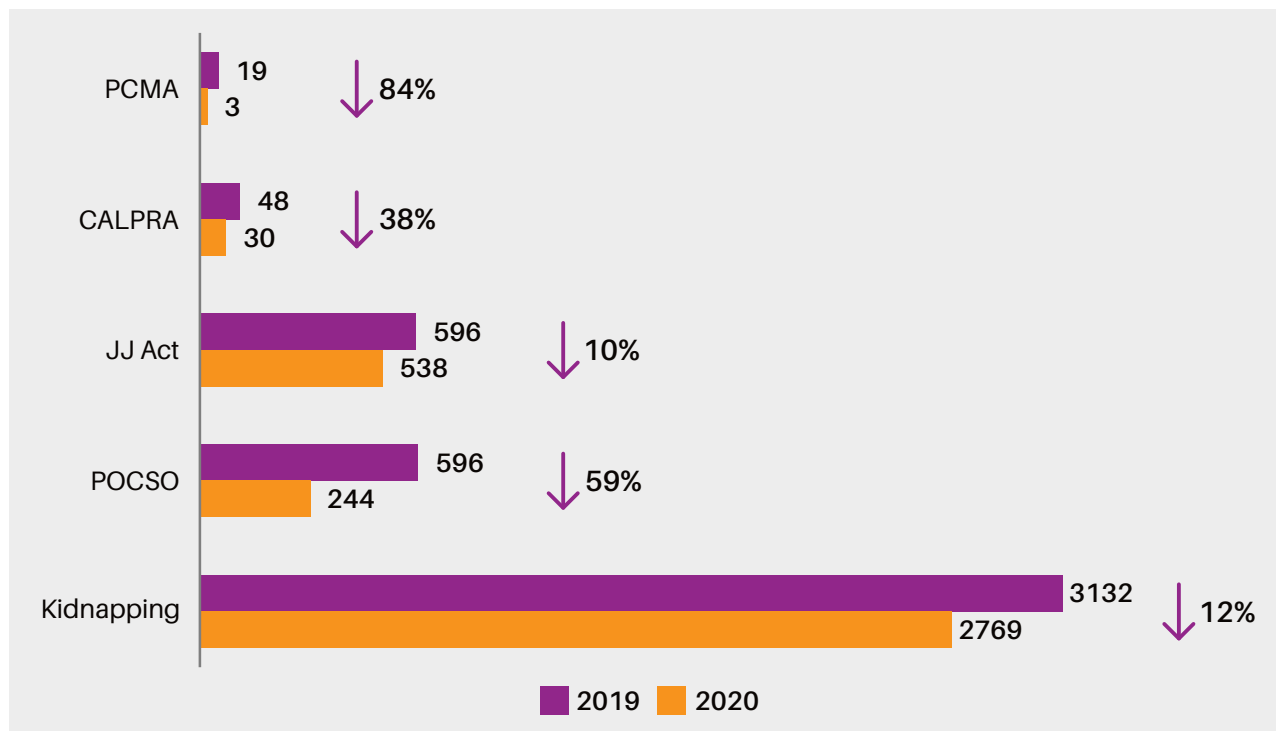
¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴Rajasthan Legislative Assembly to Unstarred Question 7641 (Proforma B)

Fig.1.1 : Reporting of select crimes against children in Rajasthan (2019-2020)







Source : National Crime Records Bureau, Crime in India 2019 Vol.1, Table 4A.1,p.350-369 & Crime in India 2020 Vol.1, Table 4A.1, p. 302-321

1.2. Rescues Undertaken and Action Taken in Cases of Child Labour

- Rescues :** The number of children belonging to Rajasthan who were rescued increased by 13% from 2019 to 2020.¹⁵ In contrast, the number of children belonging to other states who were rescued in Rajasthan fell by 26% from 2019 to 2020.¹⁶ (Table 1.2)

Table 1.2 : Year-wise in-state and out-of-state child labourers rescued

Year	In-state rescued 	In-state rescued 	In-state Total	Out-of-state rescued 	Out-of-state rescued 	Out-of-state Total	Year wise Total
2019	682	9	691	671	9	680	1371
2020	719	60	779	489	12	501	1280
Total	1401	69	1470	1160	21	1181	2651

Source : Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 7641





¹⁵Unstarred Question 7641 in the Rajasthan Legislative Assembly

¹⁶Unstarred Question 7641 in the Rajasthan Legislative Assembly

Similarly, the percentage of out-of-state boys rescued from child trafficking for the purpose of labour under Section 370, IPC, fell by 29% from 123 in 2019 to 87 in 2020 while the percentage of out-of-state girls rescued fell by 78% from 18 girls in 2019 to

4 girls in 2020.¹⁷ The fall in the rescues of out-of-state children in 2020 could be on account to the closure of state borders and travel restrictions imposed during the pandemic.

Table 1.3: In-state and out-of state children trafficked for labour under Section 370, IPC rescued in 2019 and 2020

Year	In-state boys rescued 	In-state girls rescued 	Total in-state children rescued	Out-of-state boys rescued 	Out-of-state girls rescued 	Total out-of-state children rescued	Year wise Total
2019	100	7	107	123	18	141	248
2020	199	26	225	87	4	91	316
Total	299	33	332	210	22	232	564

Source : Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 7641

- Percentage of child labourers and bonded child labourers rescued dropped by 25% from 2420 in 2019 to 1817 in 2020.¹⁸ This reduction could be on account of the travel restrictions and diversion of human resources during the pandemic.
- The number of children trafficked for labour under Section 370, IPC and rescued increased by 27% from 248 in 2019 to 316 in 2020.¹⁹ Of this, 43% rescues took place in 2019 and 56% rescues took place in 2020.
- The percentage of in-State boys rescued from child labour stood at 95% and was much higher than the girls rescued in 2019 and 2020.²⁰ (Table 1.2)
- Children are not only coming from the five neighbouring states of Rajasthan (Gujarat, Uttar Pradesh, Haryana, Punjab, and Madhya Pradesh), but also travelling long distances from eastern and north-eastern states, as well as from Nepal. This puts children at excessive risk and raises questions about the mechanisms by which they come to work in Rajasthan.





¹⁷ Reply in Rajasthan Legislative Assembly to Unstarred Question 7641 (Proforma B)

¹⁸ Reply given to the Rajasthan Legislative Assembly Question 3703.

¹⁹ Extracted from Rajasthan Legislative Assembly to Unstarred Question 7641 (Performa B)

²⁰ Reply given to Unstarred Question 7641 in the Rajasthan Legislative Assembly

Table 1.4: Top five districts with high number of child labourers rescued

	2019	2020
 Districts with high number of in-state boys rescued	Jhalawar (54), Bhilwara (51), Pali (48), Banswada (44), and Sirohi (41)	Dungarpur (131), followed by Sirohi (65) and Pali (42)
 Districts with high number of in-state girls rescued	Jaisalmer (3), Kota City and Jaipur East (2 each)	Dungarpur (29), and Udaipur (17)
 Districts with high number of out-of-state boys rescued in Rajasthan	Jaipur West (53), Ajmer (35), Chittorgarh (32), Ganganagar (30), and Jaipur East (24)	Jaipur North (333), followed by Jaipur South (27)
 Districts with high number of out-of-state girls rescued in Rajasthan	Chittorgarh (3) and Jhalawar and Bharatpur (2 each)	Jaipur West (9)

Source : Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 7641

- Challans and Final Reports :** Among the total FIRs filed in cases of child labour during 2019 and 2020, challan was issued in 1232 cases (96.5%), the Final Report (F.R.) was filed in 39 cases (3%) and was pending in only 5 cases (0.4%). The percentage of cases with challan issued was slightly more in 2020 than in 2019, but the percentage of pending cases was more in 2020 compared to the previous year.²¹ This is aligned with the views of key stakeholders who shared how the pandemic had contributed to case pendency. Out of the total 131 FIRs filed in cases of child trafficking for the purpose of labour, challans were issued in 116 cases (86%) and in 12 cases (9.1%) Final Reports were filed. Three cases were pending, all in 2020.

- Arrests :** There was a 7% drop in the number of persons arrested for child labour from 747 persons in 2019 to 693 persons in 2020 and could probably be on account of reduction in the FIRs filed from 2019 to 2020.²² In contrast, in cases of child trafficking for labour, a total of 245 persons were arrested in 2019 and 2020 with the majority (60%) of the arrests i.e, 146 taking place in 2020, despite the pandemic.²³
- The percentage of pending cases was more in 2020 compared to the previous year. This aligned with the views of key stakeholders who shared that the pandemic had contributed to case pendency.

²¹Rajasthan Legislative Assembly to Unstarred Question 7641.

²²Rajasthan Legislative Assembly to Unstarred Question 7641.

²³Rajasthan Legislative Assembly to Unstarred Question 7641.

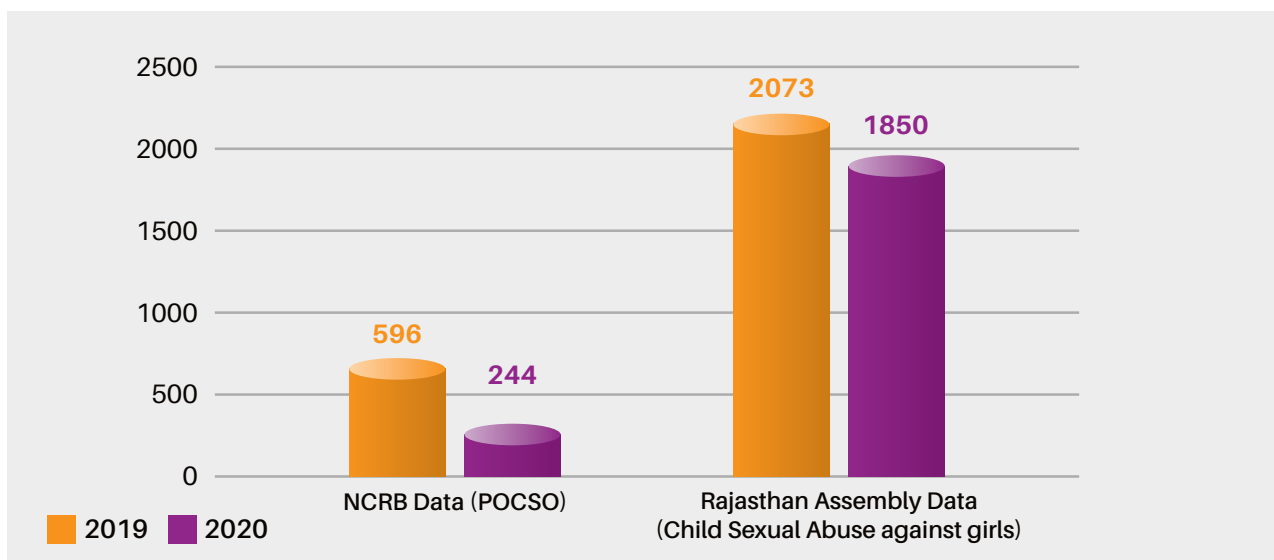
1.3. Child Sexual Abuse Against Girls

- According to the data extracted from the response to Unstarred Question 2857, there was a 11% decrease from 2073 in 2019 to 1850 in 2020 of cases of sexual abuse against girls below 18 years that were registered across the state. However, according to NCRB data, the number of registered POCSO cases declined by 59% from 596 in 2019 to 244 in 2020.
- The districts where most cases were registered in 2019 were Bharatpur (116), Banswada (93) and

Dungarpur (85) while in 2020, most cases were registered in Bharatpur (139), Dungarpur (96) and Udaipur (74).²⁴

- Of the 3923 cases registered in 2019 and 2020, challans were issued in 75% of the cases (2976 cases). Final reports were prepared in 20% of the cases (770 cases) for both the years.²⁵ During 2019 and 2020, there were 199 cases pending investigation viz. 5% of the total cases.

Fig. 1.2 : Cases of child sexual abuse in Rajasthan registered in 2019 and 2020



Source : Crime in India, 2019 and 2020 published by NCRB, Reply to Rajasthan Legislative Assembly Unstarred Question 2857

1.4. Unsolved Cases of Missing and Kidnapped Children

- There were a total of 327 unsolved cases of missing and kidnapped children in 2019 and 2020, of which 107 cases were from 2019 and 219 cases were from 2020.²⁶ A majority of the unsolved cases i.e. 255 cases were of girls and 71 cases were of boys found missing or kidnapped in the two years.
- While the percentage of boys is slightly more than the girls in 0-6 and 7-12 years age group, this reverses in the older age group. In the 13-15 years

age category, 70% of missing and kidnapped children were girls and in the 16-18 years age category, 89% of the missing and kidnapped children were girls. Bulk of the unsolved cases of missing and kidnapped children in 2020 were of girls between 16-18 years.

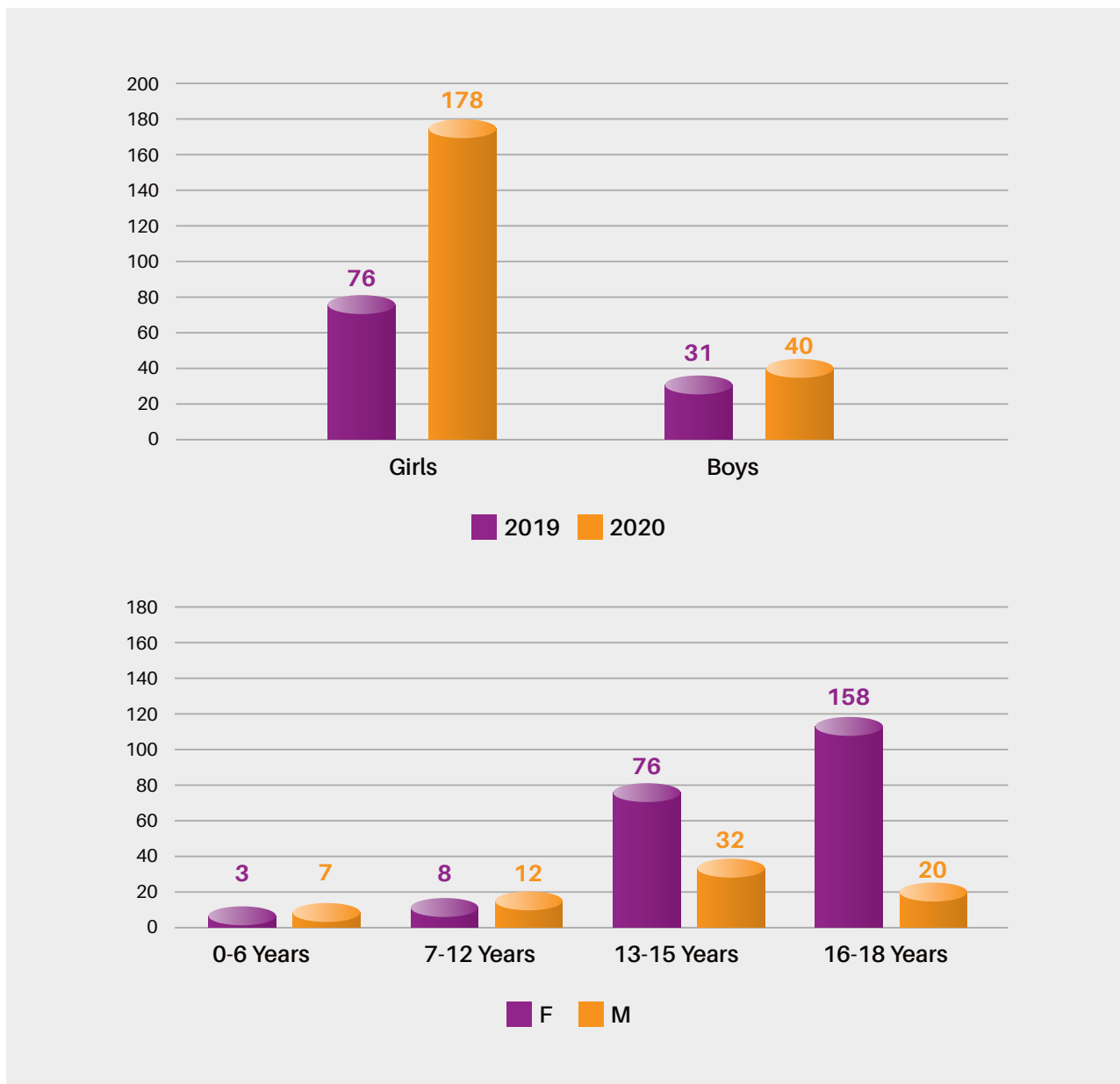
- The cases increased steeply by 118% in the 13-15 years age group and 124% in the 16-18 years age group during the pandemic year.

²⁴Reply in Rajasthan Legislative Assembly to Unstarred Question 2857.

²⁵Reply in Rajasthan Legislative Assembly to Unstarred Question 2857.

²⁶Reply provided to unstarred question no 5953 in the Rajasthan Legislative Assembly

Fig.1.3 : Unsolved cases of missing and kidnapped children by age and sex in Rajasthan (2019-2020)



Source : Extracted from response in Rajasthan Legislative Assembly to Unstarred Question 5953

Action Points

1. Access to reporting systems : Specific mechanisms to support reporting at the local, block, and village level during pandemics / crisis / emergencies need to be developed so that children have access to the police, Childline, as well local and community-based response systems. Village and district-level Child Protection Committees need to be trained and strengthened to identify and respond to child protection concerns.
2. Emergency response protocols of the police and helpline services need to factor timely responses in cases of violence against children.
3. The Department of Child Rights (DCR) may consider strengthening targeted educational and vocational interventions for adolescent girls (13-18 years) as they constitute a very high percentage of missing children.
4. DCR and the Department of Labour may consider collaboration for an inter-state dialogue and coordination system to prevent unsafe migration of children for work into Rajasthan and to ensure rehabilitation of children rescued from labour. Specific resources need to be allocated for addressing issues of migrant children, especially safe temporary shelters, transport, language interpreters, and protocols for a streamlined system of repatriation and coordination.
5. The Department of Home may consider ensuring that district-level data on rate of disposal, convictions and acquittals, and pendency for all crimes against children is compiled and also disaggregated based on caste, religion, and disability (if any) of child victims. Purpose of kidnapping and trafficking may also be indicated.
6. For evidence-based programme planning on child marriage at the state and district-level, the District-level Task Force may make concerted efforts to improve collection of data and evidence on the issue at the local level and make it available in the public domain. In order to do this, it would be critical to build and invest in block-level and village-level systems that can track cases of child marriage and maintain data. DCR and Department of Home may consider collecting and making available the number of child marriages prevented, type of informants, number of child marriages solemnised after intervention; and the number of injunction applications filed and granted under Section 13 of the PCMA. Disaggregated data based on age and gender, and data on the action taken by CWCs such as restoration to family, placement in a CCI, restoration to fit person or relative, etc., may also be included
7. The Department of Home and DCR may collectively examine the reasons for increase in the number of unsolved cases of missing and abducted children, particularly girls between 16-18 years and data, if any, available on the proportion of elopements in this age-group needs to be recorded
8. DCR and Department of Labour may examine factors contributing to the year-to-year fluctuations of children rescued from child labour and bonded labour and review strategies and initiatives taken by districts and to what extent they are based on the geographical mapping of working children.
9. SCPCR, civil society organisations, and nodal departments may undertake an examination of the wide variation in the NCRB data and the data presented in the Assembly in respect of reported cases of sexual offences against children, child labour, and child trafficking, to further understand the reasons for differences.
10. DCPU may consider creating a district-specific database that can track children at risk, monitor the number of cases registered regarding crimes committed against children and record the support provided to these children.

II. Judicial Response in Cases under the POCSO Act, 2012

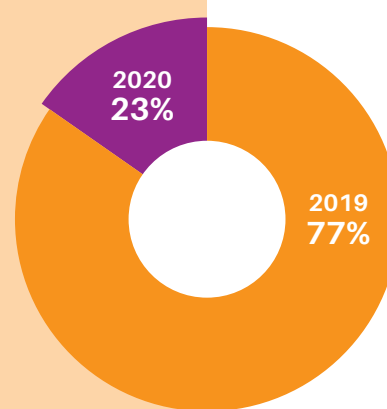
This section presents the analysis of 375 cases downloaded from e-courts under the POCSO Act, 2012 decided in 2019 and 2020 by Special Courts of five districts.

For the purpose of the analysis of cases under the POCSO Act, all judgments registered and disposed under the POCSO Act, 2012 by Special Courts in Rajasthan, between 2019 and 2020, and available on the e-Courts website were downloaded.

Table 2.1 : District-wise number of judgments obtained and analysed from Rajasthan

District	Special Court Judgments
Bhilwara*	152
Chittorgarh	75
Dausa	72
Pratapgarh	73
Sri Ganganagar	3
Total	375

*Only 50% of cases in Bhilwara were considered for this study.



2.1. Profile of Child Victims of Sexual Offences

- **Gender:** Cases of sexual abuse against boys were rare, as 99% victims were girls, thus pointing to the need for efforts to create an enabling environment for boys to report sexual abuse.
- **Marital status:** In 41 cases (11%) the victim stated that she was married to the accused, of which in 23 cases they were married at the time of lodging of the FIR. In two cases, the victims testified that their family forced them to marry the accused. One case ended in conviction,²⁷ while the other in acquittal as the victim did not testify against her husband, although she had alleged that she had been sold by her family to him.²⁸
- **Age :** Age-related information was available in a total of 275 (73%) cases and based on it, the majority of the victims were above 13 years. In 218 cases (58%), a school record or birth certificate was available and as per this 31% victims were in the age group of 13-15 years and 50% were between 16-18 years. In 197 cases (53%), age as recorded at the time of lodging of the FIR was available and in 78 of these cases (40%), victims were in the age group of 13-15 years and in 84 cases (43%) they were between 16-18 years.²⁹ Children below 12 years constituted 16% cases as per the age specified in the FIR and 18% cases as per the school records or birth certificates.

²⁷State of Rajasthan v. Sanjay, Sessions Case No. 57/2018 decided by the Special Court in Chittorgarh on 06.10.2019.

²⁸State of Rajasthan v. Prakashchandra, Sessions Case No. 67/2019 decided by the Special Court in Bhilwara on 13.11.2019.

²⁹The figures also include cases where age was specified as the same or different in the FIR and document, and hence these cases are counted both in the age according to FIR and age according to the document. In some cases there were multiple victims in a case but as the victims belonged to the same age bracket within a case, the data has been presented case-wise.

Fig.2.1 : Profile of child victims of sexual offences

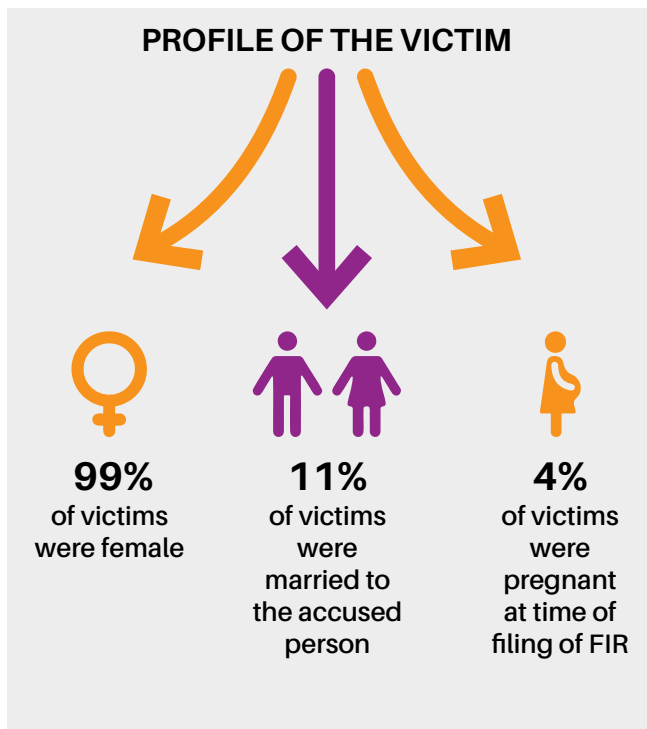
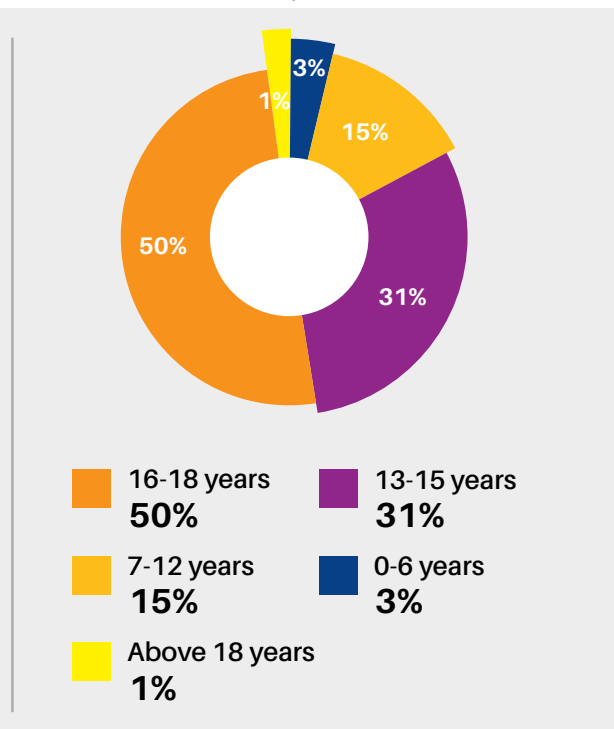


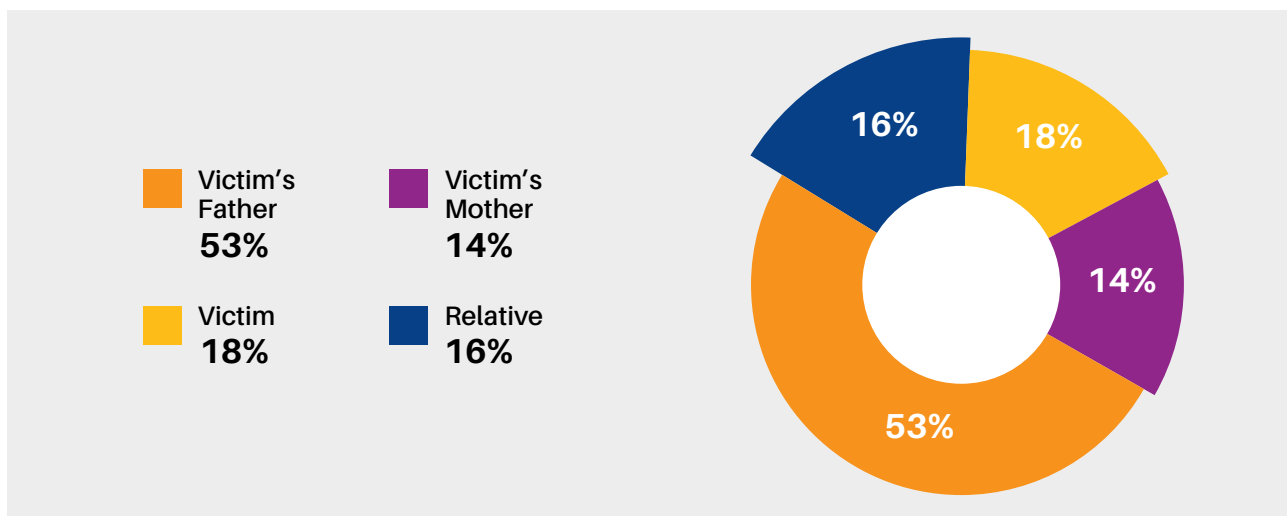
Fig.2.2 : Age-profile of child victims based on documentary evidence



2.2. Profile of Informants

- In a majority of cases i.e 249 cases (66%), the victim's parents lodged the complaint against the accused. In 67 cases (18%), the victim filed the complaint. In 59 cases (16%), the informant was either the victim's sibling or a relative such as a cousin, an uncle or aunt or a grandparent or father-in-law.
- In all cases, the informants were either related to the victim or the victim themselves, indicating that the mandatory reporting provision under Section 19, POCSO Act,³⁰ is not necessarily being utilised.

Fig.2.3 : Profile of informants



³⁰Section 19, requires any person who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed to report the offence to the police or Special Juvenile Police Unit.

2.3. Profile of the Accused

- Gender :** Out of a total of 577 accused persons, 549 (95%) accused persons were male and 28 (5%) were female. Notably, female accused persons were not the primary accused and were charged mainly with abetment of offences under Sections 363, 366, 366A, 376, 341, 354, and 354B, read with Sections 34, and 120B of IPC and under Sections 5/6 and 16/17 of the POCSO Act.
- Identity of the accused :** The accused was known to the victim in a majority of cases (83%) and abuse by a stranger (5%), was an exception. In 45 cases (12%), the relationship between the accused and the victim was unclear or not specified.
- Known persons :** Among the persons known to the victim, "acquaintances" (30%) such as co-workers, a relative's co-worker or friend, and stalkers, constituted the majority of accused persons. This was followed by co-villagers (21%), boyfriends (14%), relatives (11%), and neighbours (9%). Other accused persons included husbands in 22 cases (7%) and friends in 23 cases (7%). In three cases, the accused was the victim's teacher, in two cases, the accused was the victim's father, and in one case, the accused were two police officers.

Fig.2.4 : Profile of the accused

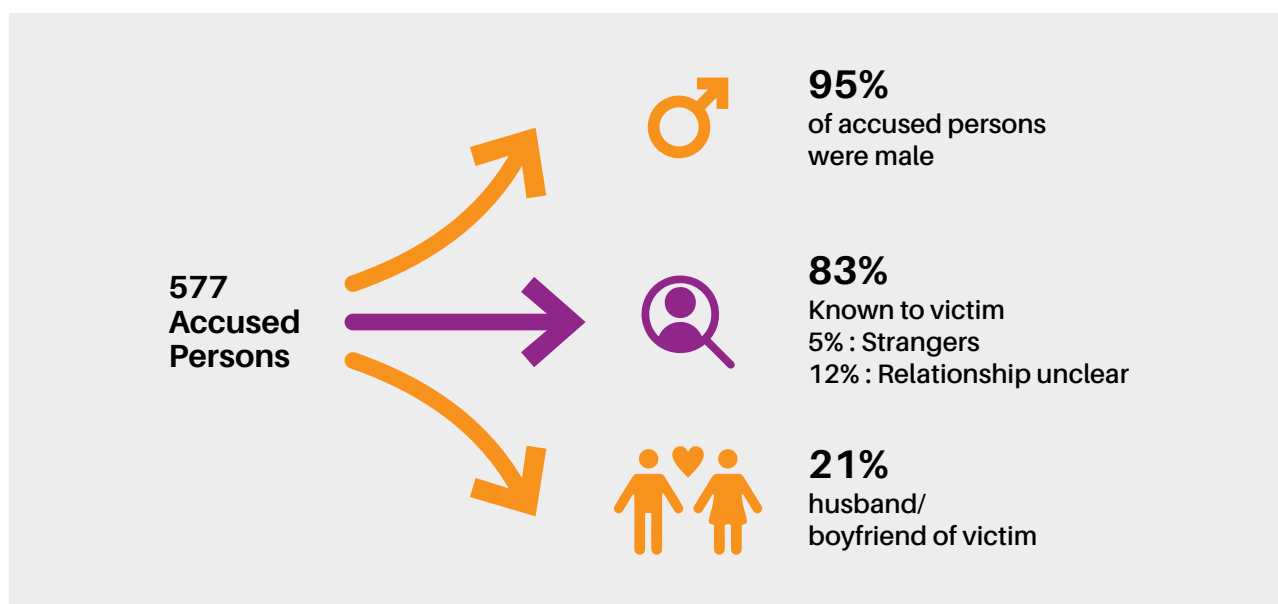
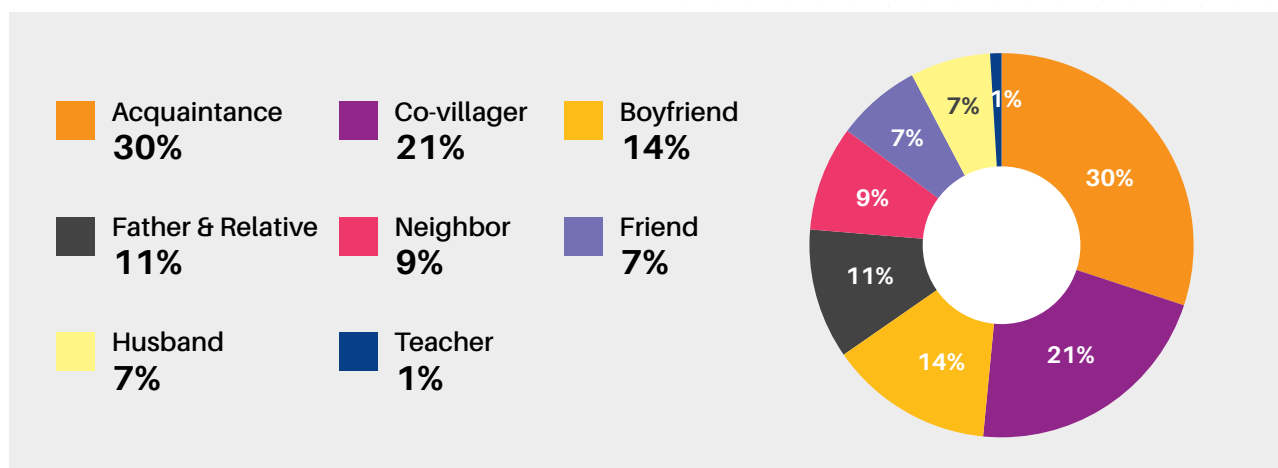


Fig.2.5 : Profile of accused persons known to victim



2.4. Nature of Charges

- Apart from the POCSO Act, the accused was also charged under the IPC in 372 cases (99.2%). Other significant legislation applied was the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (SC/ST Act) in 42 cases and under the Information Technology Act, 2000 in three cases.
- The accused was charged under penetrative sexual offences under the POCSO Act in 272 cases (73%) of which in 42% cases they were charged under Sections 4 and in 146 cases (39%) they were charged under Sections 6, POCSO Act.
- Aggravated grounds included 70 cases of repeated penetrative sexual assault, 14 cases of gang penetrative sexual assault, nine cases of penetrative sexual assault on a child below 12 years, four cases of penetrative sexual assault by a relative, and three cases of penetrative sexual assault which resulted in a pregnancy. Concerningly, **in 81 cases (22%), it was observed that aggravating charges were not applied although the facts indicated their presence.** Aggravating factors that were not considered included assault by a relative, penetrative sexual assault which resulted in pregnancy, repeated assaults, sexual assault on a child below twelve years, sexual assault by staff of

an educational institution, taking advantage of a child with disability, and commission of sexual assault along with an attempt to murder.

- Charges of sexual assault were included in 84 cases (22%) of which the accused was charged for sexual assault under Section 8 in 76 cases (20%) and for aggravated sexual assault under Sections 10 in 11 cases (3%). Charges under sexual harassment under Section 12, POCSO in 26 cases (7%).
- **Kidnapping-related provisions : In 243 cases (65%),** the accused was charged **under kidnapping / abduction charges** under Sections 359 to 374 of the IPC along with POCSO provisions. Kidnapping-related provisions were also included in 77% cases in which the accused was charged with a penetrative sexual offence under the POCSO Act.
- **Rape-related provisions :** In a majority of cases i.e. 261 cases (70%) the accused was charged under rape related provisions under the IPC, of which in some cases the accused was charged under multiple provisions. The accused was charged under Section 376 in 224 cases (60%), under Section 376D (gang rape) in 33 cases (9%), under Section 376DA (gang rape of woman under 16 years) in two cases and under Section 376AB (rape of a woman under 12 years) in six cases.

Fig.2.6 : Nature of charges against the accused

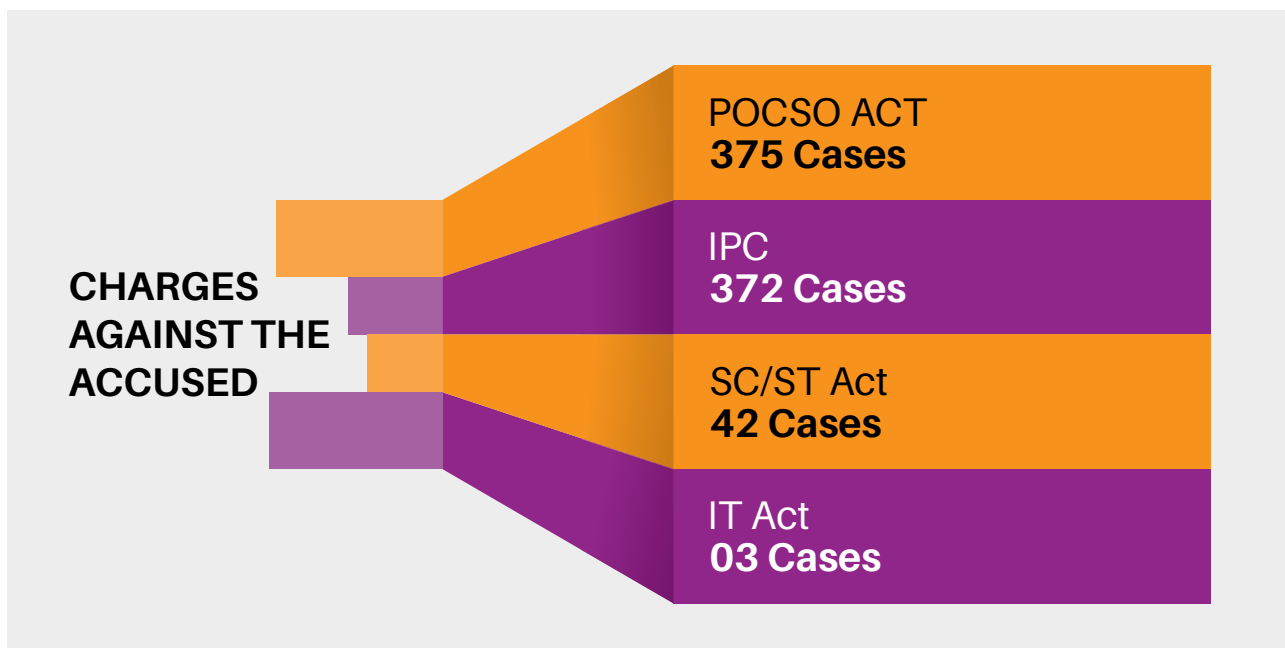
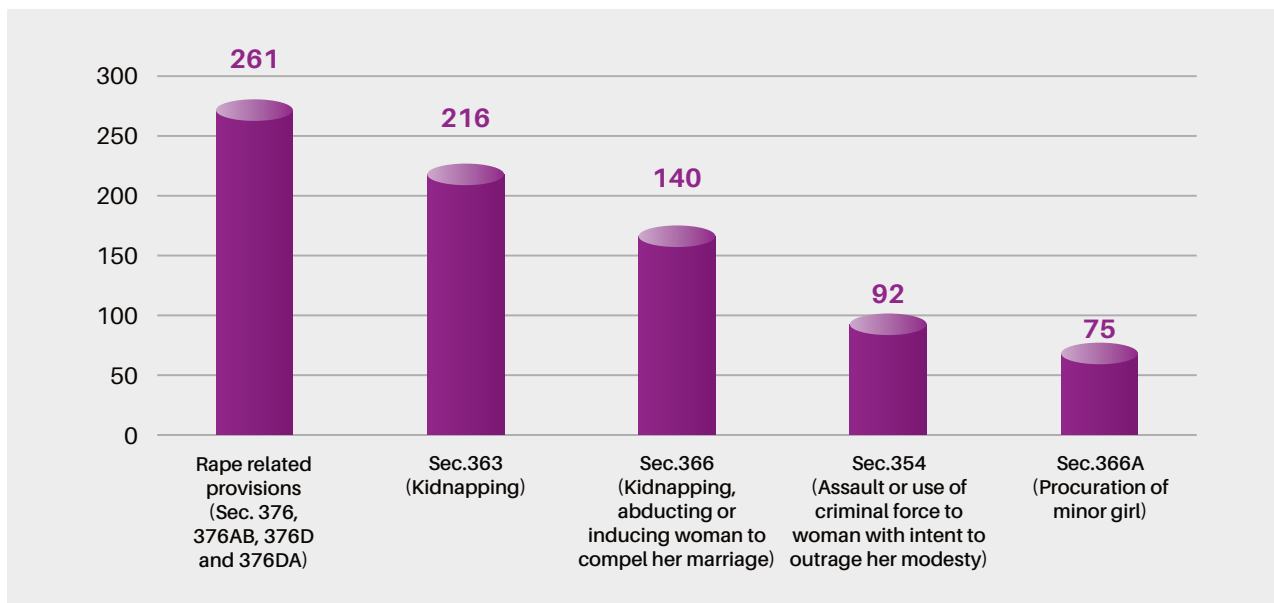


Fig.2.7 : Most common provisions used for charges under sections in IPC



2.5. Compliance with Child-friendly Procedures

- Section 33(2) of the POCSO Act requires the Special Public Prosecutor, and defence counsel to communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child. There was no express reference to the Special Court putting questions to the child. **In 129 cases (34%) there was a mention of the child being cross-examined by the defence.** The non-adherence to this procedure was also mentioned by some stakeholders.
- **Victim’s identity was disclosed in 52% cases in contravention of Section 33(7), POCSO Act.** Disclosures took place through identification of the parents, siblings, or relatives of the victim or the victim's school.
- Although Section 40, POCSO Act entitles victims to the assistance of a legal counsel of their choice or a Legal Aid Lawyer, **reference to the victim's advocate was found in only nine (2%) out of 375 cases.**
- Section 33 of the POCSO Act requires the Special Court to create a child-friendly atmosphere in the Court. Further, exposure to the accused during the evidence is prohibited, However, the absence of a separate seating area for child victims

emerged as a gap, as the accused or their families have access to the child victim while the child is waiting to be called in for the recording of the testimony. From the judgments, it was also not clear that parents, guardians, or Support Persons were present with the victim during the testimony. There was also no reference to the use of assistance of an interpreter, special educator, or expert in any case. According to one CSO representative:

“There may be many Special Courts, but they do not have a child-friendly environment. The victim is made to come to the witness stand and if a small child is involved in the case, they are made to stand on a stool.”

2.6. Nature of Outcomes

- Out of 375 cases, convictions under the POCSO Act were recorded in 83 cases (22%) and acquittals in 292 cases (78%). Among the 290 cases disposed in 2019, 79% cases ended in acquittals, while 21% cases ended in convictions. Among the 85 cases disposed in 2020, acquittals were seen in 75% cases and convictions in 25% cases.

- Maximum number of convictions under the POCSO Act, i.e 39 were under Section 6, POCSO Act, followed by 20 convictions under Section 8, 19 convictions under Section 4, six convictions under Section 12, and three convictions under Section 10, POCSO Act (aggravated sexual

assault). The accused was convicted under multiple provisions in several cases. In four cases convictions were recorded under Section 16 and 17, POCSO Act for abetment of an offence.

Fig.2.8 : Outcomes in POCSO cases disposed in 2019-2020

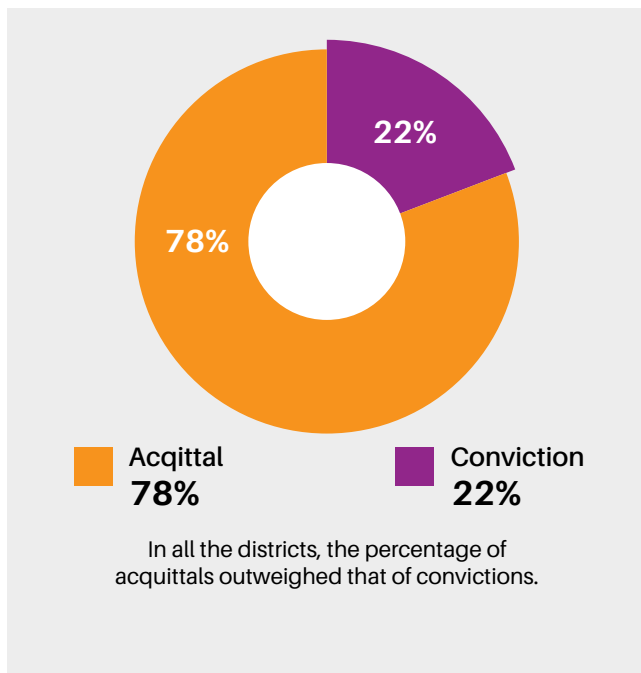
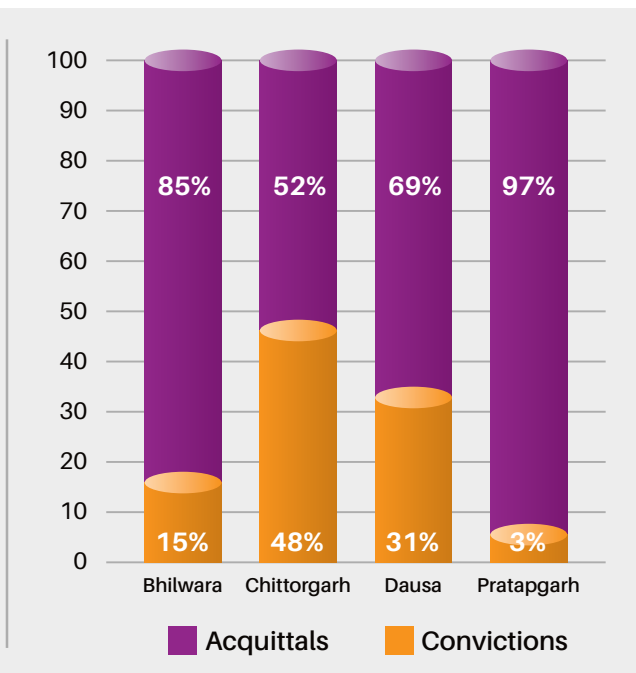


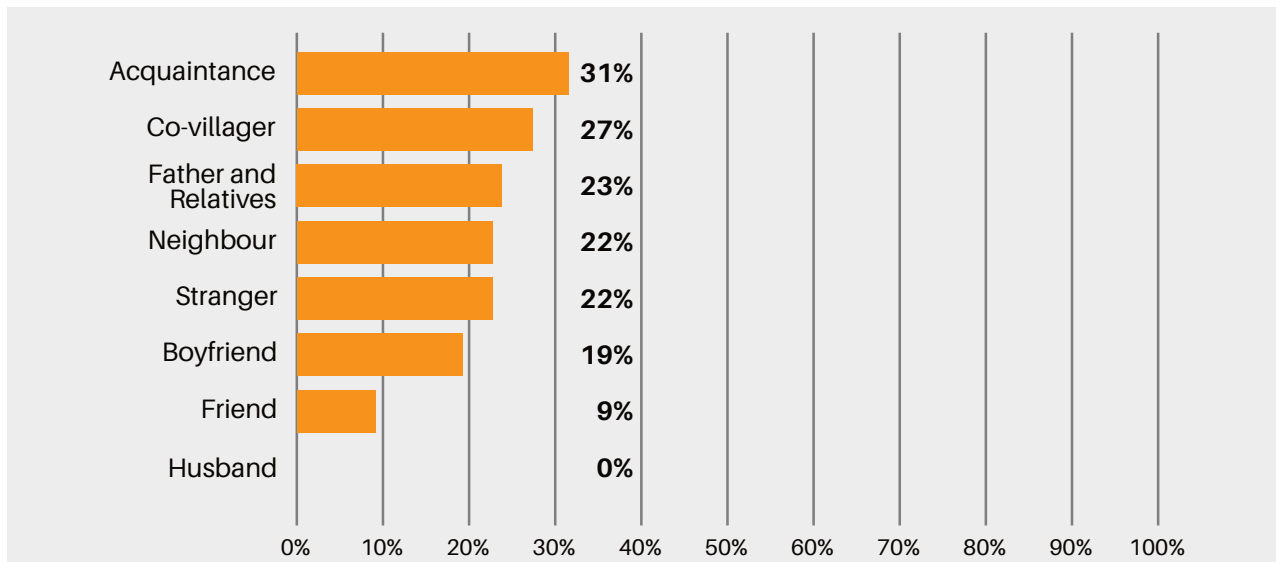
Fig.2.9 : District-wise conviction and acquittal



- A reference to a private compromise or settlement between the victim or victim's family and the accused was found in 67 of 375 cases (18%), and the accused was acquitted in 65 of these cases.

- The accused was convicted in 23% cases in which he was known to the victim and in 22% cases in which he was a stranger. Acquittals were seen in all cases where the accused was the father (2 cases) and a husband (22 cases)

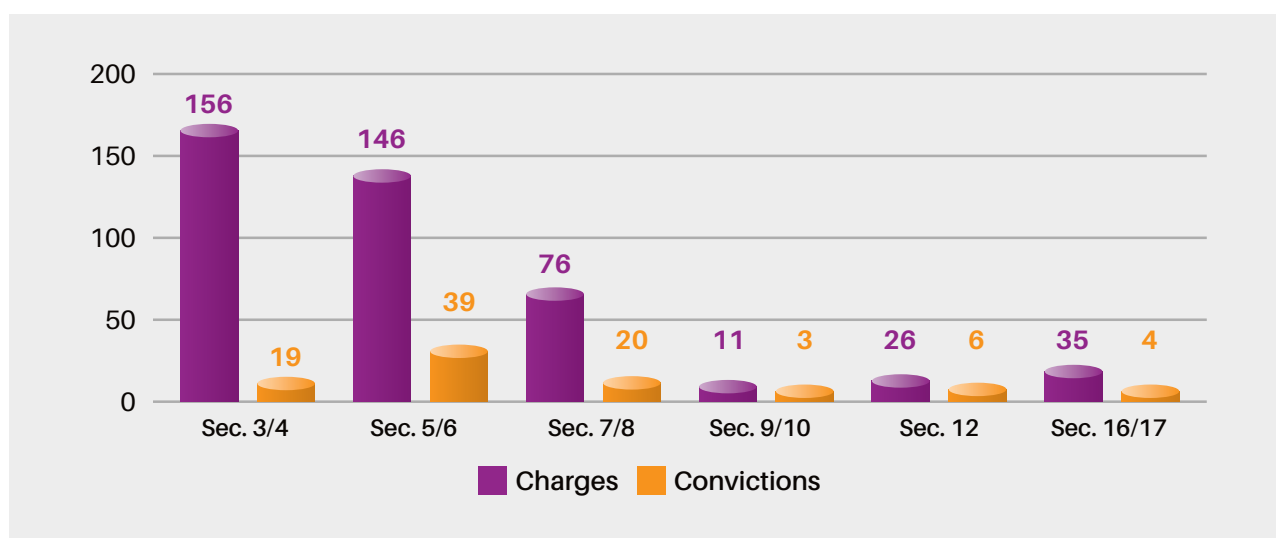
Fig.2.10 : Conviction rate according to profile of the accused



Analysis of the response of the **child protection system to violence against children in Rajasthan**

- A contrast between the provisions under POCSO Act which the accused was charged with and the provision under which conviction was recorded reveals that the conviction rate was lowest in cases of penetrative sexual assault (12%), followed by sexual harassment (23%). Conviction rate was 27% each in cases of aggravated penetrative sexual assault and aggravated sexual assault, and 26% in cases of sexual assault.

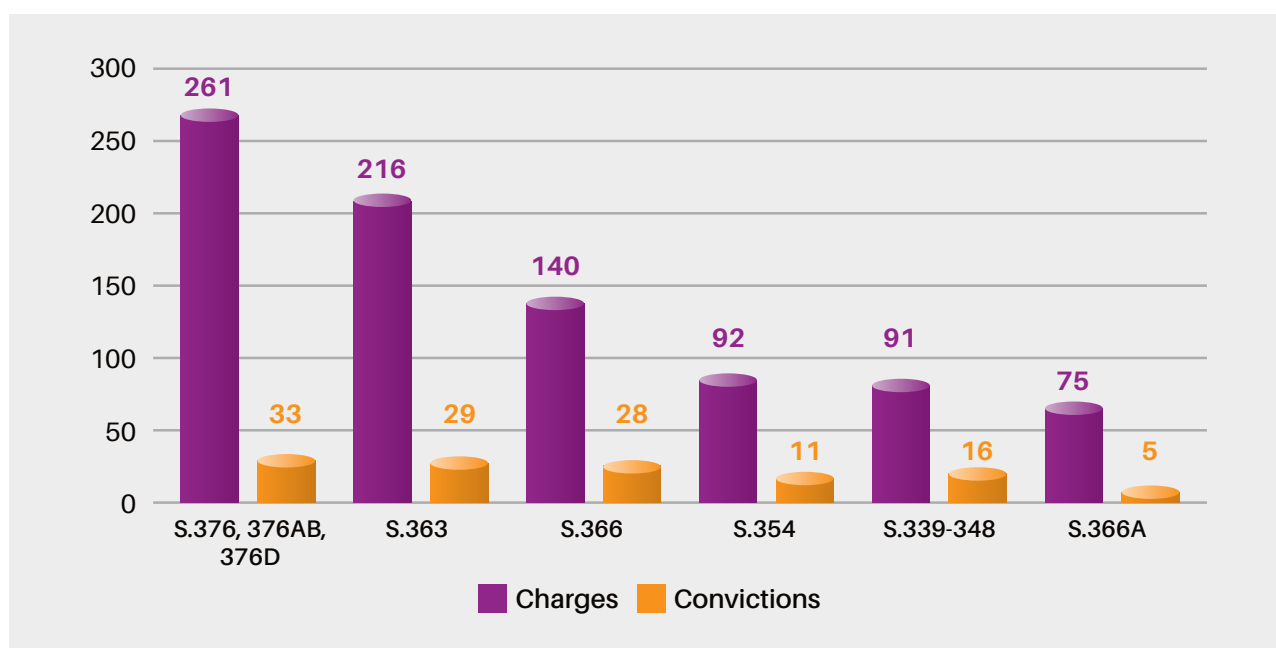
Fig.2.11 : Contrast between charges and convictions under POCSO Act



- A contrast between charges and conviction under IPC revealed that it was 13% in rape-related

charges as well as under Section 363, 20% under Section 366 and 7% under Section 366A, IPC.

Fig.2.12 : Contrast between charges and convictions under IPC



The factors that influenced conviction in 83 cases and acquittals in 292 cases under the POCSO Act are as follows :

Factor Influencing Acquittals

33%

Minority of the victim not established

The girl did not testify against the accused

59%

45%

Victim's testimony found unreliable

Compromise between victim/family and accused

22%

Factor Influencing Convictions

99%

Minority of the victim established

The victim testified against the accused

93%

53%

Presence of corroborative medical evidence

2.7. Nature of Testimony of the Victim and Outcomes

The manner in which the victim has testified in court is critical for an understanding of the eventual outcomes, and the support that needs to be extended to victims. The analysis indicates:

- Convictions were much higher in cases where the victim testified against the accused, and negligible in cases where the victim did not testify against the accused.

- A substantial proportion i.e 47% of victims did not testify against the accused. Out of the 174 cases where the victim did not testify against the accused, the accused was acquitted under the POCSO Act in 170 cases (98%). In the remaining three cases (2%) the accused was convicted as the victim's minority was established, other witnesses testified against the accused, and there was supporting medical evidence.

Fig.2.13 : Conviction/acquittal vis-a-vis victim's testimony against the accused

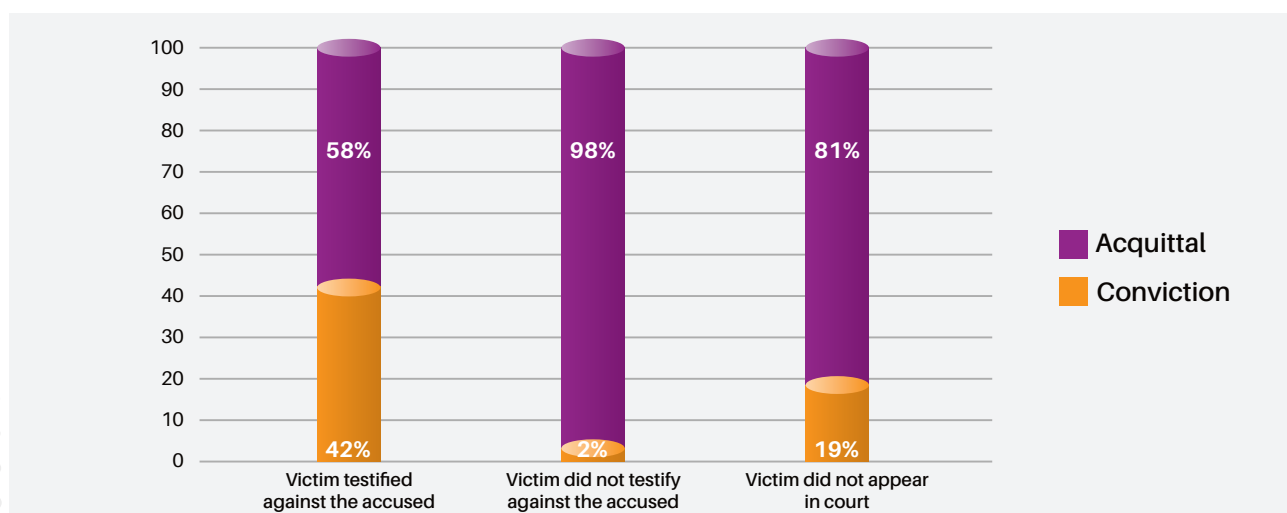
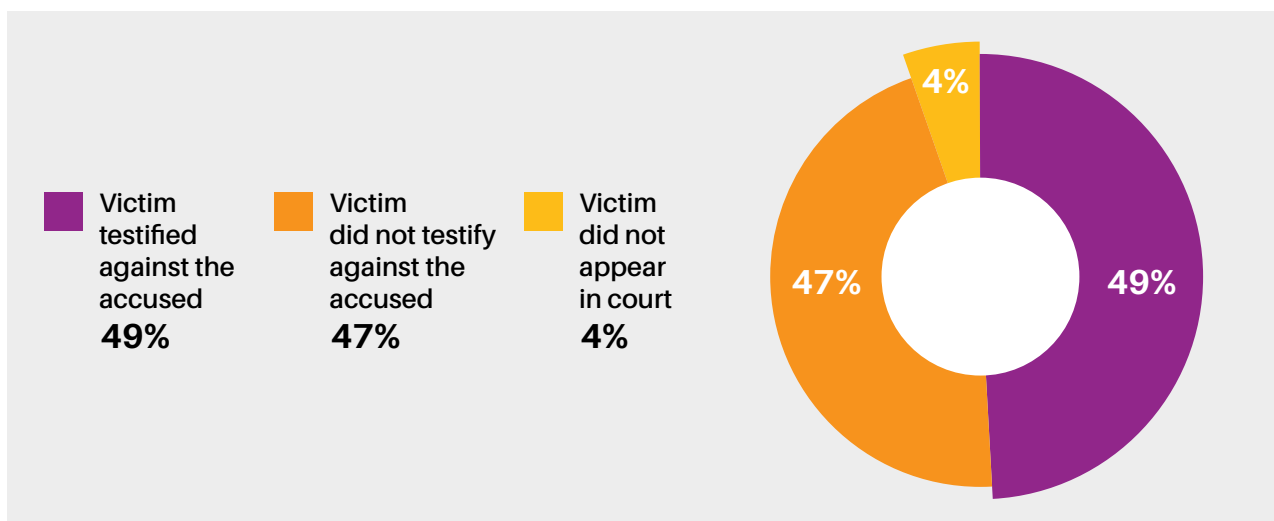


Fig.2.14 : Nature of testimony of the victim




- Out of the total 375 cases, the victim testified against the accused in 184 cases (49%). Of these 184 cases, the accused was acquitted under the POCSO Act in 107 cases (58%) and convicted in 77 cases (42%). In 83 of the 184 cases (45%), the victim’s testimony was considered unreliable by the Special Courts.
- In 16 cases (4% cases) the victim did not appear before the Special Court as the victim was untraceable (five cases), deceased (five cases), disabled (two cases), or not produced (four cases). The accused was acquitted under the POCSO Act in 13 of these cases and convicted in three cases.

I was above 18 years

Nothing happened

I don't know him

We have compromised



Victim was declared hostile in 43% cases.

- In 161 (43%) out of 375 cases, the victim was declared hostile. However, there was no acknowledgment of threats or reference to any witness protection measures taken by the court in the judgments. The accused was acquitted under the POCSO Act in all of these 161 cases.

- Out of the 75 cases from Chittorgarh, the victim testified against the accused in 45 (60%) cases and did not testify against the accused in 28 cases (37%). Of the 73 cases from Pratapgarh, the victim testified against the accused in only nine cases (12%) and did not testify against the accused in a staggering 62 cases (85% cases). Of the 92 cases in Bhilwara in which the victim testified against the accused, the testimony was considered to be unreliable in a majority of the cases i.e. in 61 cases (66% cases). In contrast, the victim’s testimony was not considered unreliable in any of the cases in Chittorgarh district in which the victim testified against the accused. In Dausa, of the 38 cases in which the victims testified against the accused, their testimonies were considered unreliable in 15 cases (40% cases). In Pratapgarh, of the nine cases in which the victim testified against the accused, the victim's testimony was considered to be unreliable in seven cases.
- It was observed that victims did not testify in cases in which there was a proximate relationship with the accused such as where the accused was the father, boyfriend, or friend. In both the cases in which the accused was the father, the complaint was lodged by the mother and the victim was declared hostile.

Fig.2.15 : District-wise nature of testimony of victim

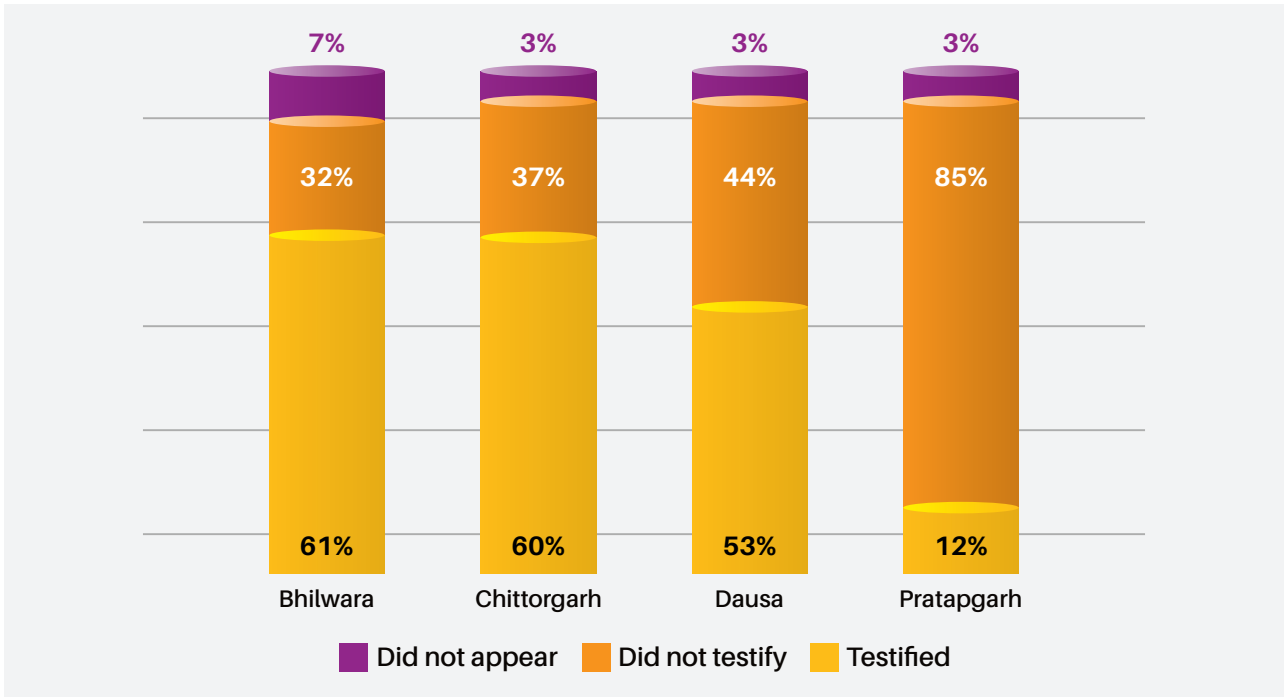
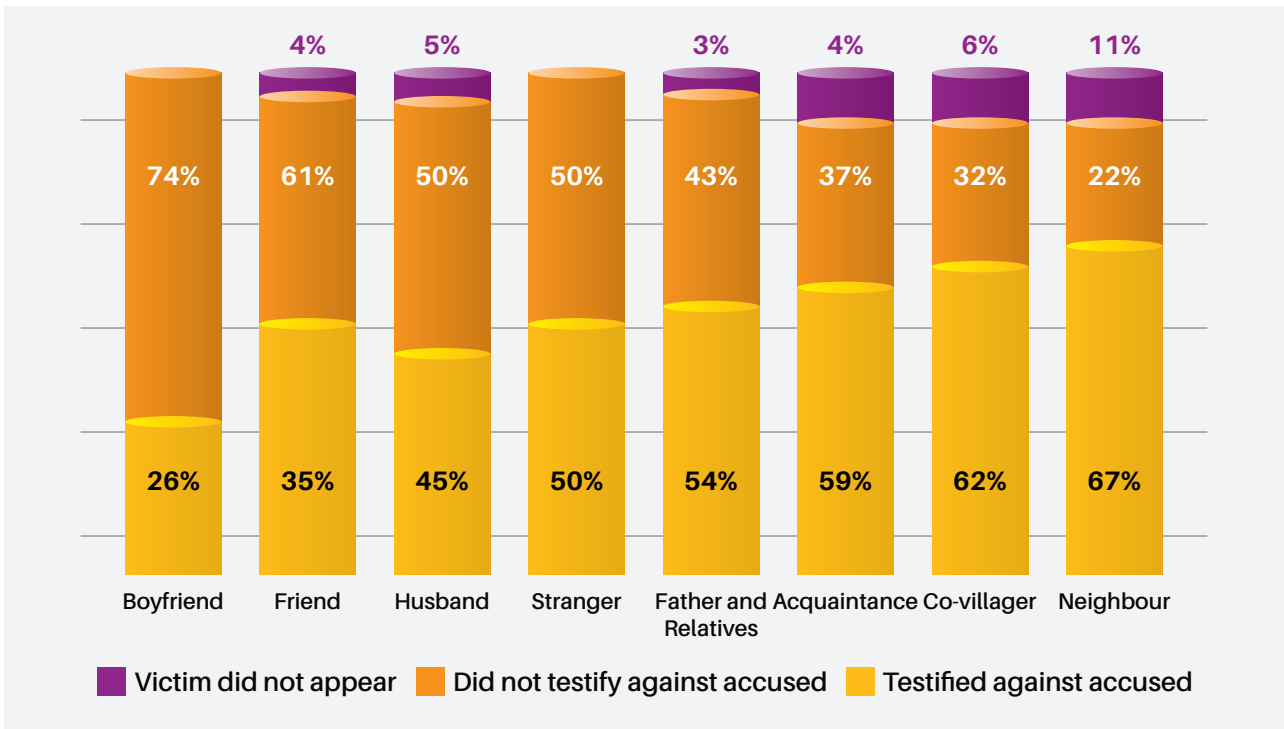
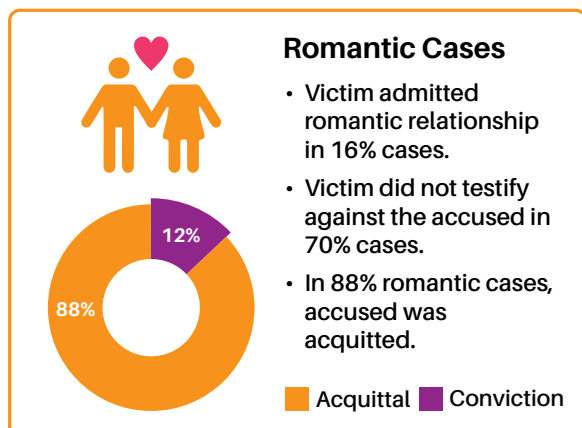


Fig.2.16 : Testimony of victim according to profile of the accused



2.8. Outcomes in Romantic Cases



- Romantic cases refer to cases in which the victim admitted to being in a relationship with the accused. The victims admitted to such a relationship in 59 cases (16%) out of 375 cases either in their statements to the police, or Magistrate, or during their testimony.
- In romantic cases, the victim's minority was established in 20% cases, not established in 49% cases and her age was not determined by the court in 31% cases.
- The victim did not testify against the accused in 41 cases (70%) and testified against him in only 18 cases (31%) of which in 10 cases her testimony was considered unreliable by the court.
- The accused were acquitted under the POCSO Act in 52 romantic cases (88%) and convicted in only seven cases (12%). In all the romantic cases where the accused was convicted under Sections 4 and 6 of the POCSO Act and Section 376 of the IPC, they were sentenced to ten years of rigorous imprisonment.

2.9. Nature of Medical Evidence

- **Availability of Medical Evidence:** Medical evidence was on record in 177 (47.2%) cases. Of these, in 44 cases convictions were recorded as the medical evidence corroborated the offence.
- **References to "two-finger test", "habituated to sex":** In several cases, the medical examination

report included references to the two-finger test, and conclusions that the victim was "habituated to sex" and that there were no signs of rape or sexual assault, contrary to the normative standards on contents of a medical examination report. For instance, the reports stated, "पीड़िता की योनि मैं दो उंगलियां आराम से जा पा रही थी"; "पीड़िता संभोग की आदि थी". This practice is contrary to the Supreme Court's decision in *Lillu v. State of Haryana*,³¹ wherein it was held that "undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity." Further, the Ministry of Health and Family Welfare Guidelines and Protocols - Medico-legal care for survivors/victims of Sexual Violence, also states that "'two- finger test', must not be conducted for establishing an incident of sexual violence and no comment on the size of vaginal introitus, elasticity of the vagina or hymen or about past sexual experience or habituation to sexual intercourse should be made as it has no bearing on a case of sexual violence."³² In another case,³³ although the victim testified against the accused, the Special Court acquitted the accused because it was of the opinion that resistance and struggle is normal during sexual assault, but the medical report did not indicate any injuries or marks on the victim and accused's genital areas.

- **Delays in FSL reports :** In several cases, it was observed that the medical officer stated a final conclusion could be made only on the basis of the FSL report, but the FSL report was not available during the trial suggesting delays in submission of forensic reports.
- **Need for training on collection of samples :** It was also observed that where medical evidence such as semen on the victim's underwear was available, the FSL report was inconclusive or the blood group could not be ascertained, pointing to the need to address the manner in which samples are collected and transmitted.

³¹(2013) 14 SCC 643

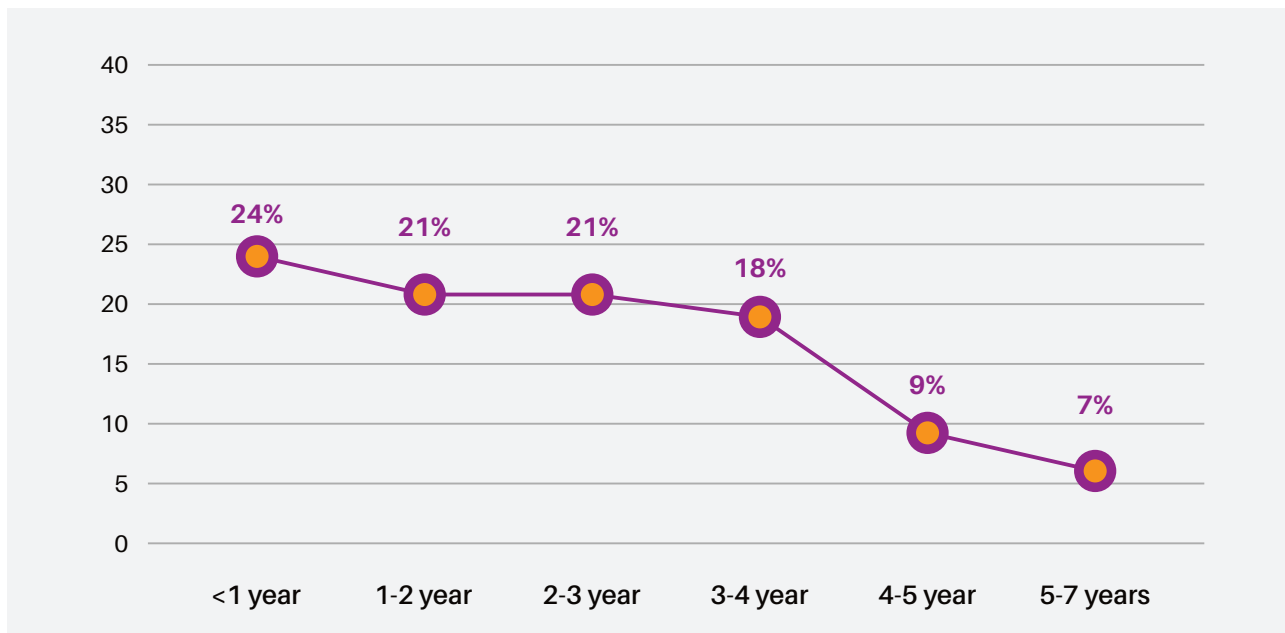
³²"Guidelines & Protocols "Medico legal care for survivors/victims of Sexual Violence", Ministry of Health & Family Welfare Government of India, Pg. 60, para. 2, <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>

³³*State of Rajasthan V. Jayesh*, Sessions Case No. 49/2018 decided by the Special Court in Pratapgarh on 29-02-2020.

2.10. Time Taken from Lodging of FIR Till Disposal of Cases

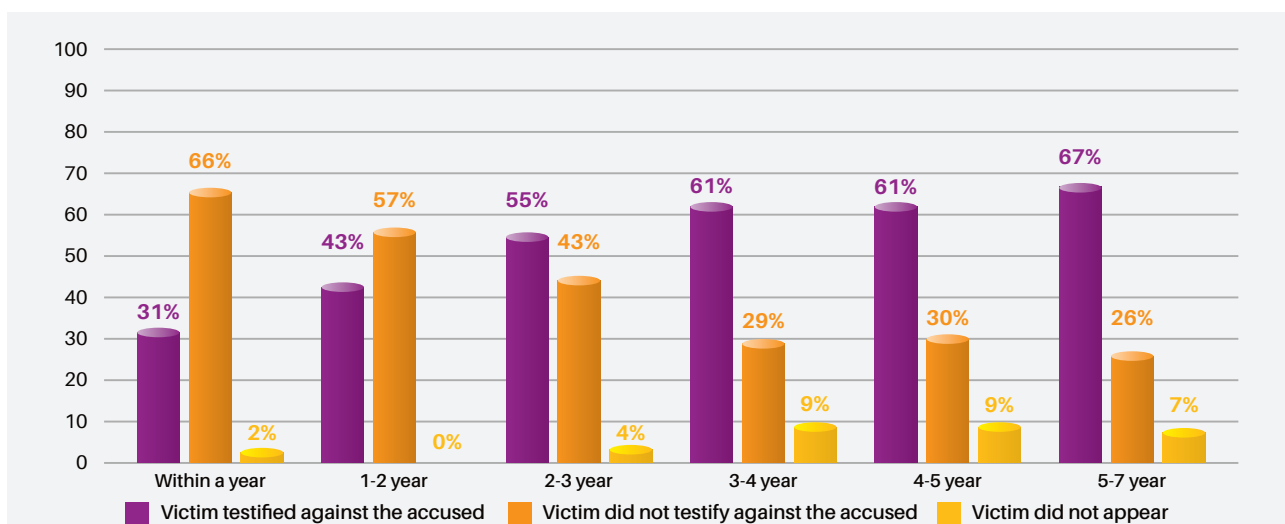
- Of the 375 cases studied, 77% cases were disposed of in 2019, and 23% in 2020. The drop in disposal in 2020 may be attributed to the restrictions imposed due to COVID-19.
- Maximum time taken from the FIR till the date of judgment was six years and five months and shortest was within two months.
- Average time taken from the FIR till the date of judgment was 2 years and 5 months.

Fig.2.17 : Time taken from FIR till disposal of cases



- An analysis of the disposal time and the nature of testimony revealed that the percentage of victims who testified against the accused was low in cases disposed of within a year (31%) and the rates were higher beyond this period. This suggests that the trial takes time when the victim deposes against the accused as the Special Court then proceeds to examine other witnesses in the case. Whereas, when the victim and informant do not say anything incriminating against the accused or is declared hostile, the Special Court usually does not examine the other witnesses.

Fig.2.18 : Disposal time vis-a-vis nature of testimony

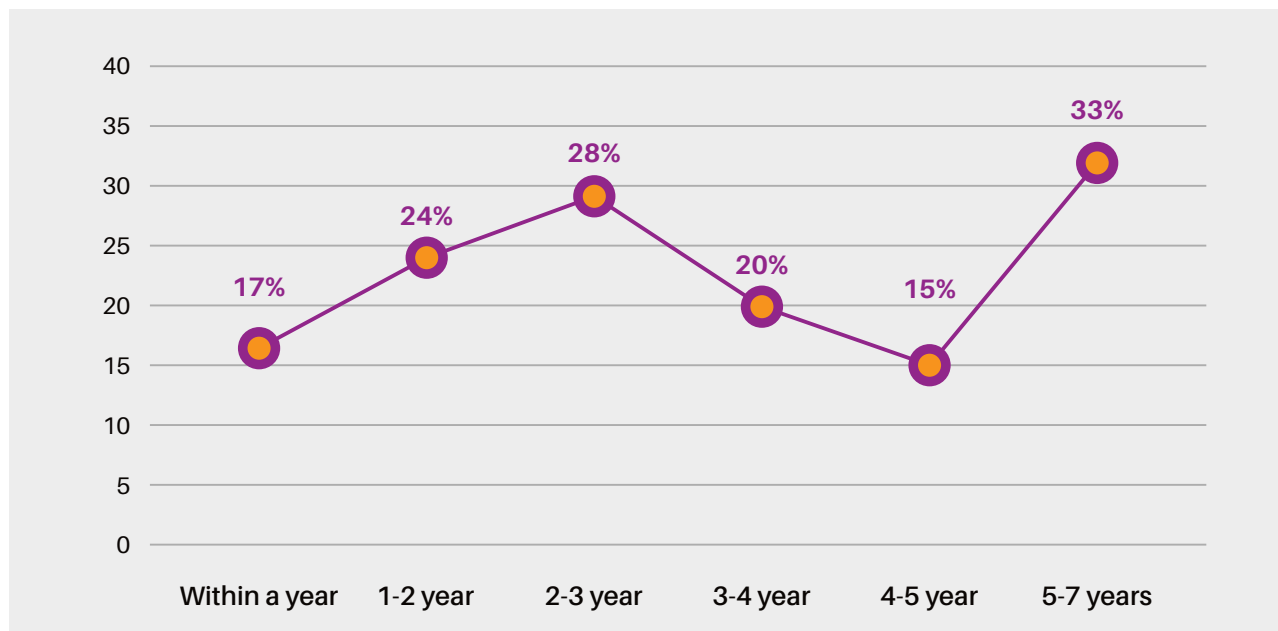


Analysis of the response of the **child protection system to violence against children in Rajasthan**

- The conviction rate was lowest in cases that took 4-5 years (15%) or less than a year to dispose of

(17%), and was high at 24% and 28% in cases that took between 1-2 years and 2-3 years to dispose of.

Fig.2.19 : Disposal time vis-a-vis conviction rate



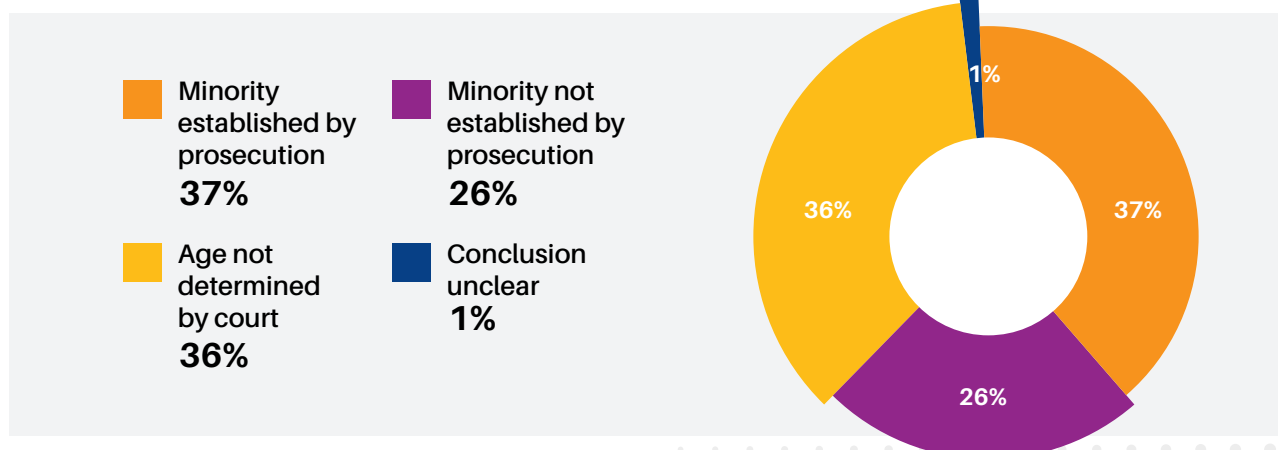
2.11. Age Determination by the Special Court

- The victim's age was not determined by the Special Court in 133 out of 375 cases (36%). It was observed that in these cases, the victim did not testify against the accused (106 cases), was declared hostile (102 cases), the testimony was considered unreliable (20 cases) or the victim did not appear before the court (five cases).
- The victim's age was contested by the accused in 117 (31%) cases. In 35 of these cases the Special Court held that the minority was established, in 70

cases the minority was not established and in 12 cases it did not determine the victim's age.

- Of the 99 cases in which the victim's minority could not be established, the accused was acquitted in all cases under the POCSO Act. Conversely, the conviction rate was better in the cases in which the victim's minority had been established i.e, of the 140 cases in which it had been established, the accused was convicted in 82 cases (59%) under the POCSO Act.

Fig.2.20 : Nature of testimony of the victim



- A reference to Section 94, JJ Act, 2015 was found in 98 out of 375 cases (26.1%). Several Special Courts relied on the apex court's decisions in *Jarnail Singh v. State of Haryana*,³⁴ *Vinischiya Mahadev v. State of Maharashtra*,³⁵ and *State of M.P. v. Anup Singh*,³⁶ while determining the victim's age. Based on this, they observed that Rule 12(3), Juvenile Justice (Care and Protection of Children) Model Rules, 2007 would be applicable in relation to determination of the age of the child victim. The Special Courts also mentioned that the Juvenile Justice (Care and Protection of Children) Act, 2015 has replaced the 2000 Act, and consequently, Section 94(2) of the 2015 Act is to be considered instead of Rule 12(3), Model Rules, 2007. The Special Courts also placed reliance on testimony of parents and the victim, and the testimony of the person who recorded the age of the victim such as the Headmaster of the school or a government official who recorded the victim's date of birth to arrive at a conclusion about the age.
- The victim's school records were available in 202 cases (54%), matriculation certificate in 22 (6%) cases, and the birth certificate in 29(8%) cases. However, these documents were proven in only 130 cases (35%). The low availability of birth certificates is a cause of concern as birth certificates attract the presumption under Section 79, Indian Evidence Act, 1872, that the document is correct unless proven otherwise. School records, on the other hand, require the establishment of the basis on which age was recorded and this has been a stumbling block in many cases where the school representative

examined was either not present when the child was admitted or the parents testified that the age provided to the school was based on an estimate.

Status of Birth Registration & Certificates

While birth registration rates in Rajasthan improved from 16.4%³⁷ in 2005-06 to 66.6%³⁸ in 2015-16 and 91.4% in 2019-20,³⁹ the majority of the child victims in the adolescent category were born at a time when birth registration rates were exceedingly low. The gulf between birth registration and birth certification is evident from the Annual Health Survey (2012-2013) as per which, 81.2% births were registered in Rajasthan, but only 44.3% children received a certificate.⁴⁰ According to NFHS-4 (2015-2016⁴¹), 66.6% of births were registered of children below the age of 5 in Rajasthan, but only 48% of those children whose births were registered had a birth certificate.

- A medical test for determining the age of the victim was conducted in 47 cases, and included assessments of the number of teeth, development of secondary sexual characteristics, ossification test, and in one case the colour of the pubic hair.⁴² The manner of reference to the age range lacked uniformity as in some cases the medical expert provided a two year age range, while in others it was a one year or three year range. In some cases, the medical expert merely stated that the child was below a particular age like below 12 years or below 16 years.

³⁴ *Jarnail Singh v. State of Haryana*, 2013 (3) SCC (Criminal) 302.

³⁵ *Vinischiya Mahadev v. State of Maharashtra*, 2013 (14) SCC 637.

³⁶ *State of M.P. v. Anup Singh*, 2015 (7) SCC 773.

³⁷ National Family Health Survey-3, 2005-2006, Rajasthan, Table 8, Birth registration of children under five, <http://rchiips.org/nfhs/raj_state_report.pdf> p. 34.

³⁸ National Family Health Survey-4, 2015-16, Rajasthan, Table 8, Birth registration of children under five, <<http://rchiips.org/nfhs/NFHS-4Reports/Rajasthan.pdf>> p. 40.

³⁹ National Family Health Survey-5, 2019-21, Fact Sheet- Rajasthan, Rajasthan Key indicators, <http://rchiips.org/nfhs/NFHS-5_FCTS/Rajasthan.pdf> p. 3.

⁴⁰ Annual Health Survey, 2012-13, Fact Sheet - Rajasthan, <https://www.censusindia.gov.in/vital_statistics/AHSBulletins/AHS_Factsheets_2012-13/FACTSHEET-Rajasthan.pdf> p. 100.

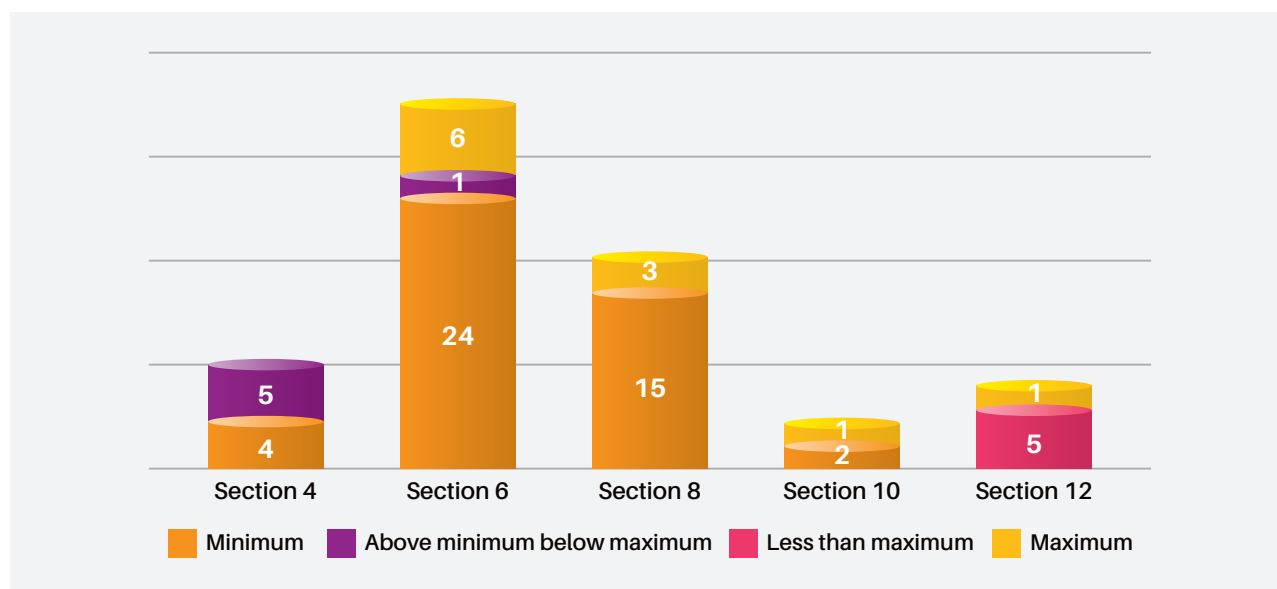
⁴¹ National Family Health Survey-4, 2015-16, Rajasthan, Table 8, Birth registration of children under five, <<http://rchiips.org/nfhs/NFHS-4Reports/Rajasthan.pdf>> p. 40.

⁴² *State of Rajasthan v. Vijay Choudhary*, Session Case No. 60/2018 decided by the Special Court in Dausa on 16.10.2019.

2.12. Sentencing Pattern

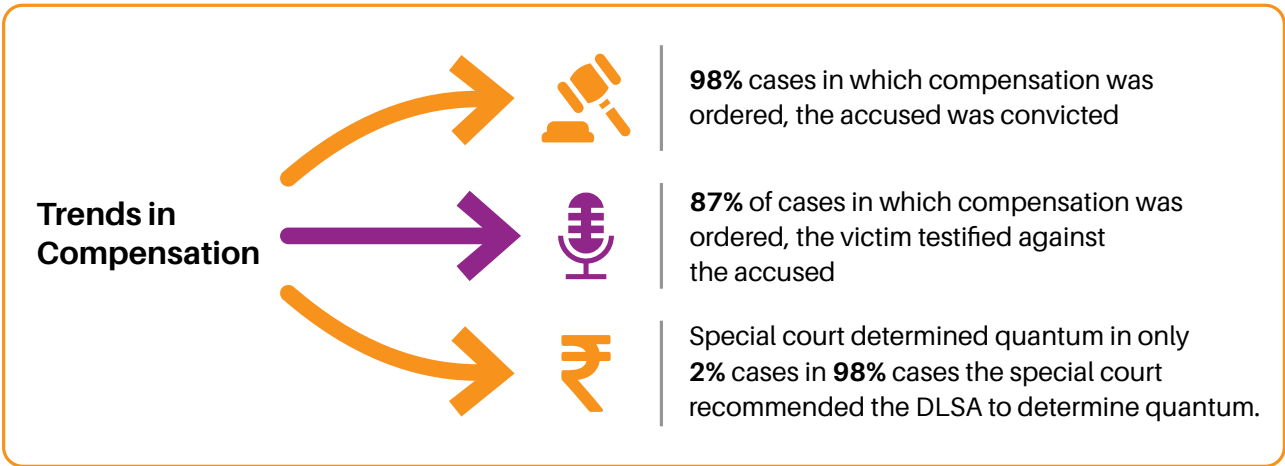
- In a majority of the cases i.e 43 cases, upon conviction, the Special Court awarded the minimum sentence under the POCSO Act. The imposition of the maximum sentence was an exception and was awarded in only 11 cases under the POCSO Act, of which six cases were under Section 6, POCSO Act prior to its amendment in 2019, three cases were under Section 8, POCSO Act and one case each were under Sections 10 and 12, POCSO Act.
- A similar trend was also observable in cases under Section 376, IPC, wherein the minimum sentence was imposed in 13 cases, maximum in four cases, and above minimum and below maximum in six cases. In all cases, the Special Court ordered that the sentences imposed would run concurrently.
- Life imprisonment was imposed in six cases under the POCSO Act, of which five cases also entailed convictions under Section 376, IPC, and in two cases each under Sections 376AB, IPC and 376D, IPC.

Fig.2.21 : Sentencing Pattern under POCSO Act



2.13. Compensation

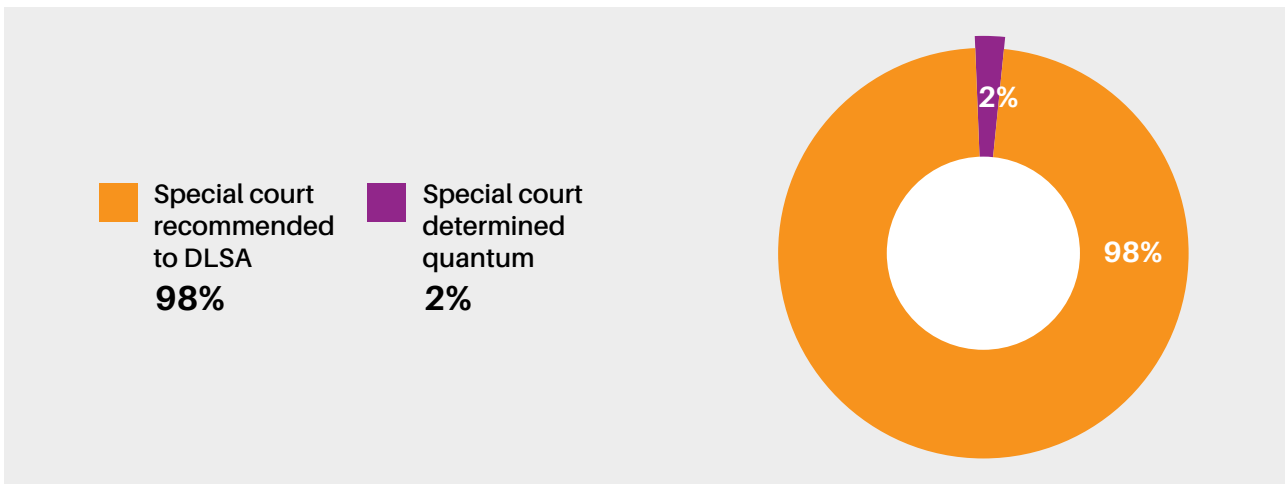
- The Special Court considered compensation in 91 cases (24%).
- While the judgment analysis did not indicate any reference to interim compensation, as per the data shared by the Rajasthan State Legal Services Authority (RSLSA) interim compensation was disbursed in 545 cases in 2019-20. It is not clear whether interim compensation was ordered by the Special Court or it was immediate relief paid by the DLSA under the Rajasthan Victim Compensation Scheme.
- In 98% cases in which compensation was ordered, the accused was convicted and in 87% of cases the victim testified against the accused. Compensation was recommended in four cases in which the victim turned hostile. This also tied in with the data shared by the RSLSA, as per which 99% cases in which compensation was disbursed, the accused was convicted and compensation was disbursed in only five cases in which the victim turned hostile.



- Although Section 33(8), POCSO Act and Rule 9, POCSO Rules, 2020, require the Special Court to determine the quantum of compensation, this was not done in majority of the cases. The Special

Courts, instead, recommended the DLSA to decide on compensation in 98% cases and decided the quantum only in 2% cases.

Fig.2.22 : Percentage of cases where Special Court determined quantum of compensation



- In 41 cases, the Special Court directed that the fine paid by the accused be paid to the victim. The maximum fine amount directed to be paid to the victim was Rs. 5,00,000/- and the minimum amount was Rs. 5000/-.
- Analysis of the data on compensation disbursed in POCSO cases by the Rajasthan Legal Service Authority for all districts in Rajasthan in 2019 and 2020, revealed that the pandemic did not significantly impact disbursement as compensation was given in 636 cases in 2019 and 603 cases in 2020.

- For 2019, except for Chittorgarh for which data was not available, a disbursement of Rs. 1,85,803,500/- was made in 618 cases. In 2020, compensation was given in 603 POCSO cases across all districts amounting to Rs. 1,30,319,000/-. Average compensation given per case was Rs. 2,19,900.

2.14. Recommendations

For Consideration of Hon'ble High Court Committee on Juvenile Justice, Rajasthan

- District Judges may be asked to identify a private space or room in the premises of Special Courts where child victims can wait to avoid exposure to the accused.
- Special Courts may be instructed to:
 - ▶ Accord priority to recording of evidence of the child victim as delays may affect memory and compel children to relive the trauma of violence.
 - ▶ Adhere to the child-friendly provisions, particularly Section 33(2), POCSO Act.
 - ▶ Avoid mentioning the names of the victim, victim's family, school, and relatives in judgments.
 - ▶ Determine quantum of compensation in accordance with Section 33(8), POCSO Act, Rule 9, POCSO Rules, as well as *Nipun Saxena v. Union of India*, W.P. (C) No. 565/2012 order dated 05.09.18
 - ▶ Ensure that child victims are given a prior orientation of the courtroom by Support Persons.
- Implementation of the Rajasthan Witness Protection Scheme in POCSO Cases may be monitored and Home Department may be asked to make necessary modifications for adherence to the Scheme approved by the Supreme Court on 05.12.2018 in *Mahender Chawla v. Union of India*, Writ Petition (Criminal) No. 156 of 2016.
- Rajasthan Judicial Academy may be asked to conduct an integrated training of all stakeholders in collaboration with Departments of Child Rights, Home, Prosecutions, and Health to strengthen the response to cases under the POCSO Act.

For Consideration of Department of Child Rights

- Ensure availability of trained Support Persons in all districts and their appointment by CWCs so that the child and the family receive support during pre-trial & trial processes. Consider reviewing the payment conditions for Support Persons under Bal Mitra Scheme to provide a fixed amount on a timely basis for consistent support to child victims during investigation and trial.

- Consider facilitation of quarterly convergence meetings with judges of Special Courts, SPPs, police, Support Persons, JJBs, CWCs, DCPU, CSOs and other relevant stakeholders to address bottlenecks and enable better appreciation of respective roles.
- In collaboration with the Home Department, Health Department, Prosecution Department, and Judicial Academy, consider an Integrated Capacity Building Training on POCSO Act of all stakeholders, at divisional level to promote a coordinated response in POCSO cases.

For Consideration of Home Department

- Consider creating a system for regular review meetings with IOs to examine cases under POCSO Act, the challenges being faced, and gaps in investigation and coordination.
- Consider strengthening coordination between IOs and PPs so that chargesheets are vetted, and loopholes (if any) are plugged.
- Consider conducting capacity-building on sexual offences against children for police focused on sexual offences against children under relevant laws, child-friendly procedures, investigation techniques, role of CWCs and police obligation vis-a-vis children and CWCs, witness protection, etc.
- Consider following an induction training programme with an integrated training programme for PPs, police, and medical practitioners at divisional level on POCSO cases and a joint program with DCR as well.
- Consider revising the Rajasthan Witness Protection Scheme to ensure adherence to the Scheme approved by the Supreme Court in *Mahender Chawla v. Union of India*, Writ Petition (Criminal) No. 156 of 2016 decided on 05.12.2018.

For Consideration of Department of Prosecutions

- Consider appointing Special Public Prosecutors (SPPs) who are assigned to conduct cases exclusively under the POCSO Act and appointing additional SPPs depending on the pendency.

- Consider conducting capacity-building programs on prosecution of sexual offences against children with inputs on rapport building with child victims, ensuring adherence to child-friendly procedures, role of CWC and Support Persons, victim compensation, interpretation of medical examination reports and DNA evidence, and operationalisation of witness protection.
- Consider following an induction training programme with an integrated training programme for PPs, police, and medical practitioners at divisional level on POCSO cases and a joint program with DCR as well.
- Consider whether provision can be made for a private space or room where the PPs can prepare the child victim and make them feel safe and comfortable.

For Consideration of Special Courts

- Adhere to child-friendly provisions specified in the POCSO Act. Ensure that questions are not put to the child directly by the defence and SPP.
- Adhere to Section 33(8) read with Rule 9 of the POCSO Rules 2020, as well as the Supreme Court's order in *Nipun Saxena v. Union of India*,⁴³ and determine the quantum of compensation. Proactively consider interim compensation.
- Identify a waiting room for the victim within the court premises where they would not be exposed to the accused or their family members or friends.
- Ensure compliance with Section 33(7) of the POCSO Act and avoid mentioning the names of the victim's family, school, and relatives in judgments.
- Ensure that a child is represented by a private lawyer or a state-appointed lawyer, and that such lawyer has notice of bail applications and other applications filed by the defence or the prosecution, so that the child's interests are safeguarded.
- Direct witness protection wherever necessary in accordance with the Witness Protection Scheme, 2018.

For consideration of Rajasthan Judicial Academy

- Consider capacity building programmes for Judges of Special Courts under the POCSO Act with a specific emphasis on dynamics of child sexual abuse and appreciation of testimony of child victims; appreciation of offences; appreciation of medical evidence; Witness Protection Scheme; and victim compensation.
- Consider collaborating with DCR, Dept of Home, Dept of Prosecutions & Health Dept for an integrated training to strengthen the response to cases under the POCSO Act.

For Consideration of RLSA

- Consider directing DLSAs to empanel lawyers interested in representing child victims under the POCSO Act, conduct orientation and periodic capacity building programmes for such empanelled lawyers, and furnish details of these lawyers to Special Courts, Children's Courts, and JJBs
- Consider instructing Legal Aid Lawyers to proactively assist child victims with witness protection, compensation, or other legal support.
- Consider conducting camps in collaboration with the Department of Child Rights and the concerned department to facilitate delayed registration of births of children in Child Care Institutions and the community under Section 13(3), Registration of Births and Deaths Act, 1969.

For Consideration of Department of Medical, Health and Family Welfare

- Organise capacity building programmes at regular intervals for medical practitioners, on child rights, protocols to be followed in cases of sexual offences against children, medical age determination, and writing of medical examination reports.

⁴³Supreme Court's order in *Nipun Saxena v. Union of India*, W.P. (C) No. 565/2012 dated 05.09.18.

For Consideration of Special Public Prosecutors

- Urge the Special Court to ensure that the defence does not ask questions directly to the child victim.
- Provide the child victim an orientation of the courtroom and build rapport prior to the recording of the testimony and if necessary, refresh the memory of the child victim.
- Consider moving an application for interim compensation immediately after the Special Court takes cognizance of the matter.
- Coordinate with the police to ensure that witnesses are produced in court in a timely manner.
- Ensure that the evidence of all witnesses, particularly child victims is recorded on the date of their appearance.
- Coordinate with the Support Person, to enable the Special Court to understand the goings-on in the child's life and the different nuances of a particular case.
- Move an application for witness protection in sensitive cases where there may be a threat to the life or safety of a child victim in accordance with the Witness Protection Scheme approved by the Supreme Court in *Mahender Chawla v. Union of India*.⁴⁴

For Consideration of SJPU and Local Police

- Give information to CWC about a POCSO case and Form B, POCSO Rules within 24 hours of registration of the FIR.
- Make an application for Witness Protection in cases in which the victim's life or safety are at threat to the Competent Authority under the Witness Protection Scheme approved by the Supreme Court in *Mahender Chawla v. Union of India*.⁴⁵
- Ensure that the chargesheet reflects relevant offences, particularly aggravated offences, and includes site map, photos collected, forensic evidence and statements of relevant witnesses.
- Collect necessary documents related to the age of a child victim and seek an order of the CWC/JJB/concerned court if a medical age determination test needs to be conducted.

For Consideration of DCPU

- Identify organisations and individuals who can be trained and empanelled as Support Persons.
- Prepare a list of interpreters, translators and special educators and ensure it is made available to the police, CWC, courts, and JJBs.

⁴⁴Mahender Chawla v. Union of India, Writ Petition (Criminal) No. 156 of 2016 decided by the Supreme Court of India on 05.12.2018

⁴⁵Mahender Chawla v. Union of India, Writ Petition (Criminal) No. 156 of 2016 decided by the Supreme Court of India on 05.12.2018.

III. Judicial Response to Child and Adolescent Labour

This section presents the analysis of 46 cases decided in 2019 and 2020, available on e-courts, of offences related to child and adolescent labour under the JJ Act (2000 and 2015), CALPRA, and the IPC.

District-wise distribution of cases

District	No. of Cases
Banswara	3
Baran	1
Bharatpur	3
Bundi district	1
Dungarpur	1
Jaipur	3
Jaipur district	3
Jaisalmer	10
Jalore	2
Jhunjhunu	7
Jodhpur Metro	4
Karauli	1
Kota	3
Rajsamand	2
Sawai Madhopur	1
Sirohi	1
Grand Total	46

3.1. Profile of Victims, Informants and Accused

- Profile of the victim :** There were 65 victims of which only one (2%) was female, while the remaining 64 (98%) were male. In the cases in which the age of the child or adolescent was specified, 25 victims (46%) were below the age of 14 years and 29 (59%) were above 14 years and below 18 years.

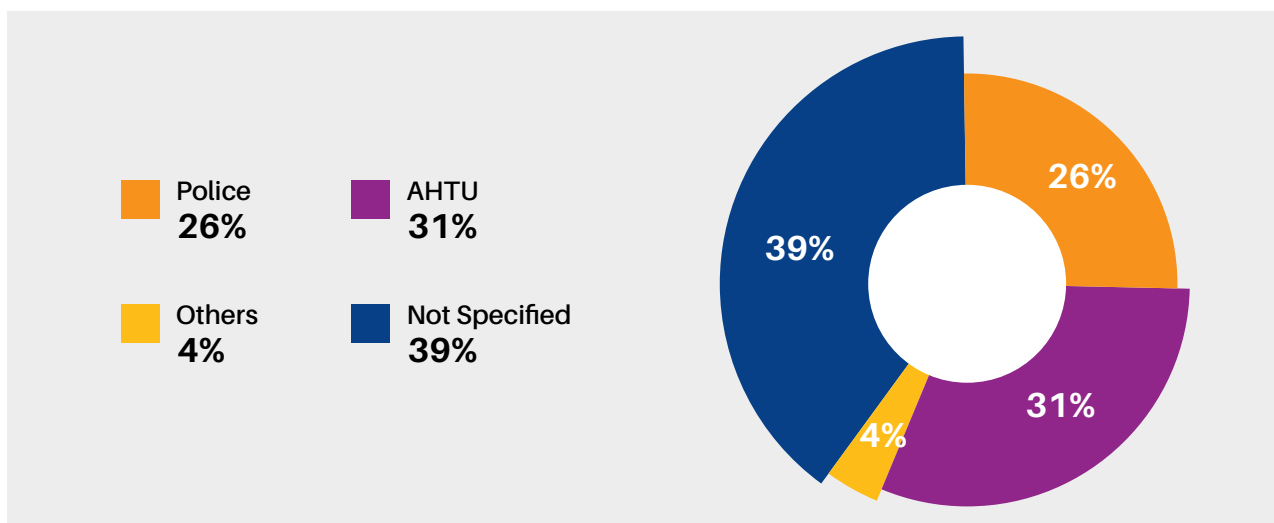
Fig.3.1 : Profile of the victim



- Profile of Informants :** The informants in child labour cases were predominantly representatives of the Anti-human Trafficking Unit (AHTU) and the police. This was also seen in the data on FIRs registered regarding child labour in Jodhpur (2019-2020), which showed only two categories of complainants, police and AHTU.⁴⁶ In one case each, ("others" in Fig.3.2), the informant was a Labour Inspector and the victim, respectively. In 17 cases, no details of the informant were available, and in one case it was not specified.

⁴⁶Compiled based on response provided in Rajasthan Legislative Assembly to Unstarred Question 6582.

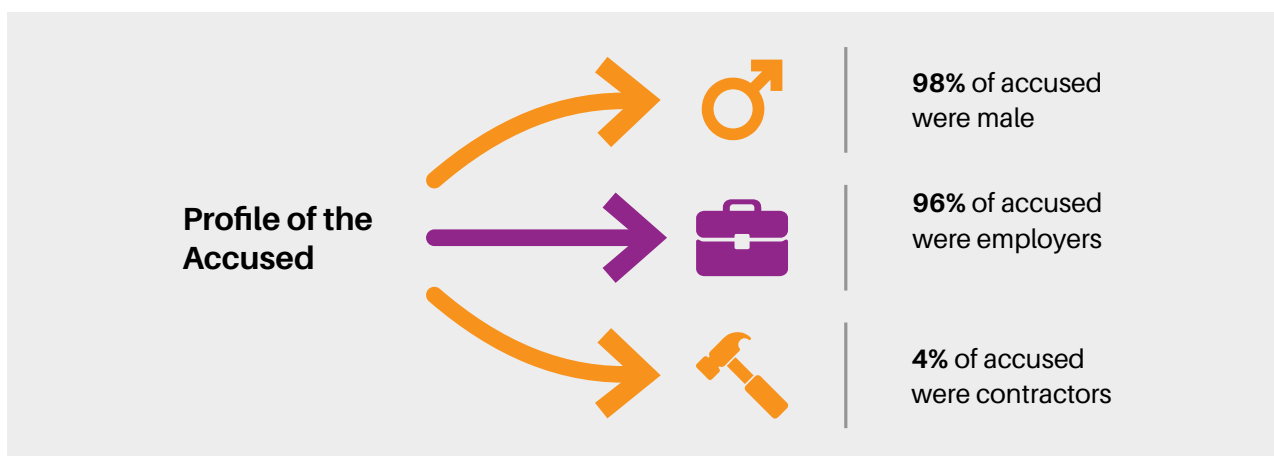
Fig.3.2 : Profile of the informants



- **Profile of the accused :** The accused persons were predominantly men (98%) who were allegedly employers of the child. In two cases, the accused was a contractor who had engaged the

child and in one of these cases, the driver of the jeep in which the children were travelling with the contractor was also an accused.

Fig.3.3 : Profile of the accused persons



3.2. Sites of Work

- The sites from where children below 14 years were rescued included a brick factory, restaurants, dhabas, and tea shops, vehicle service centres, and processes such as jewellery making, melting of metals (gold and silver), bangle making, and tailoring.
- The sites from where adolescents were rescued included domestic work, restaurants and dhabas, grocery store, and garage, and processes such as jewellery making, melting of metals (gold and silver), bangle making, and tailoring.

Fig.3.4 : Sites of work from where child and adolescent labour were rescued



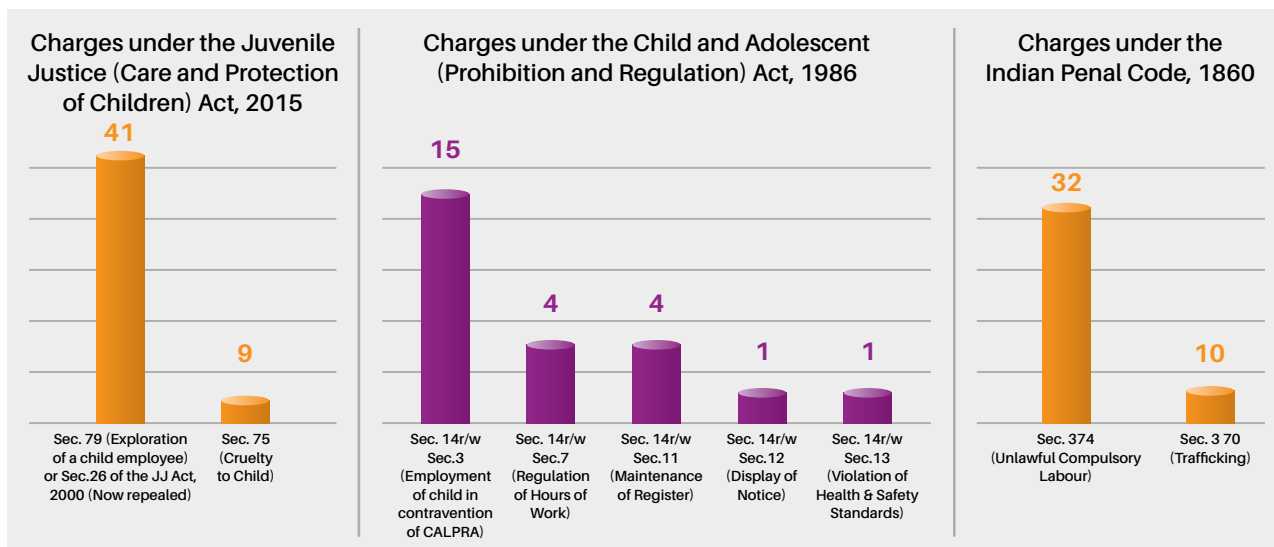
3.3. Natures of Charges Applied

- Charges in cases of child and adolescent labour reflected provisions under the JJ Act, 2000 and 2015, as well as IPC and CALPRA. **In 32 cases, the accused persons were tried both under the JJ Act, 2015 and IPC and** in five cases they were tried under the JJ Act and CALPRA. In eight cases, accused persons were tried under provisions of the JJ Act, CALPRA, and IPC and in four cases they were tried only under CALPRA.
- In a majority of the cases i.e **41 cases (89%), the accused persons were tried for the offence of exploitation of a child employee** under Section 79, JJ Act, 2015 or under Section 26, JJ Act, 2000. In eight of these cases, the accused persons were additionally tried under Sections 75, JJ Act, 2015 – punishment for cruelty to child. In one case, the accused was tried under Section 75, JJ Act, 2015 and Section 3 read with Section 14, CALPRA.
- The provisions of the CALPRA were applied in 17 cases**, wherein majority of the cases i.e 12 were lodged before and five cases after the amendment to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 came into force. In two cases that arose after the amendment, although adolescents were involved, the FIRs were lodged under Section 3

(prohibition of employment of children in any occupation and process) instead of Section 3A, CALPRA (Prohibition of employment of adolescents in certain hazardous occupations and processes) and Section 14(1A), CALPRA. The accused persons were **charged primarily under Section 3, CALPRA, 1986** read with Section 14 (penalties) in 12 cases. The two other contraventions for which the accused were charged in four cases under CALPRA were the failure to adhere to the hours and period of work under Section 7 and the failure to maintain registers in respect of children (prior to 2016 amendment) and adolescents (post 2016 amendment) permitted to work under Section 11.

- The most invoked provision under the IPC was Section 374 (unlawful compulsory labour), which was applied in all 32 cases**, followed by Section 370 (trafficking of person) which was applied in 10 cases along with Section 374. The AHTU was the informant in five cases in which Section 370 was applied and in the remaining five cases, it was the police. Accused persons were charged with trafficking of more than one minor under Section 370(5), IPC in five cases and trafficking of a minor under Section 370(4), IPC in two cases.

Fig.3.5 : Number of charges under various acts in child labour.

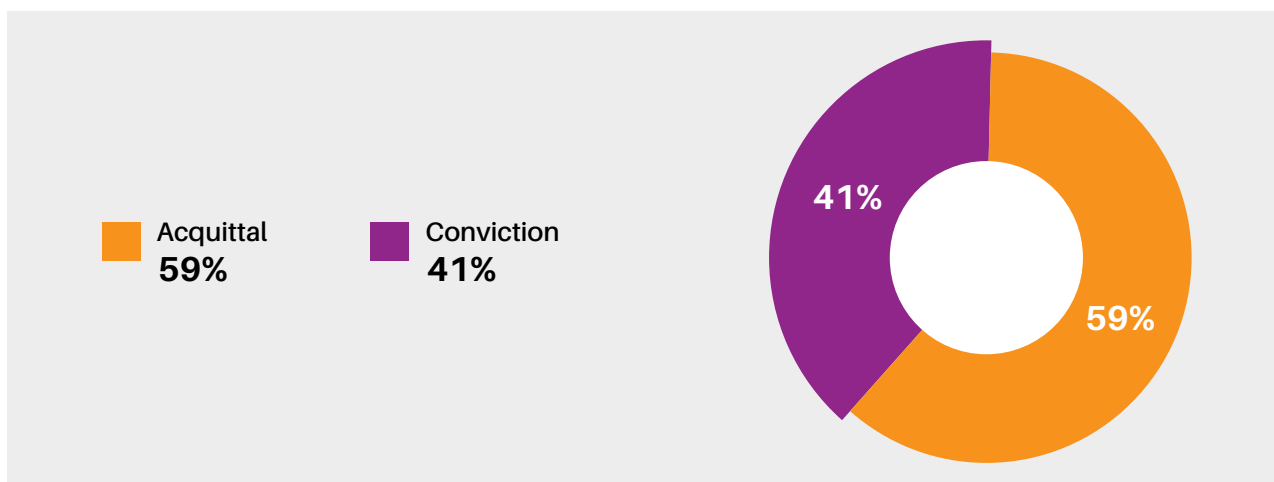


3.4. Nature of Outcomes

- Majority of the cases i.e, 27 cases (59%) ended in an acquittal. Convictions were recorded in 19 cases (41%), of which in 17 cases (89%) the accused had pleaded guilty. In 10 cases, the court expressly recorded that the accused was

motivated by the Lok Adalat proceedings and willingly accepted guilt. In cases in which the accused pleaded guilty, the court did not consider any evidence or examine the victim.

Fig.3.6 : Conviction and acquittal rate in child labour cases



- The highest number of convictions were recorded in Jaisalmer (10 cases) and Jhunjhunu (5 cases) and in all these cases, the accused pleaded guilty.
- A combination of factors led to acquittals in 27 cases, which included the victim not saying anything incriminating against the accused, failure to examine the victim or the victim's

parents, failure to establish the age of the victim, gaps in the manner in which the search and rescue operations were conducted by the police and the AHTU, and the ingredients of the offence not being established by the prosecution. In *State v. Vastupal Singh*,⁴⁷ on receiving information, the officer-in-charge of Human Trafficking and Missing Cell, reached a dhaba and found a 15-

⁴⁷ *State v. Vastupal Singh*, C.I.S. No. 448/2019 decided by the Chief Judicial Magistrate in Sirohi on 31.07.2020.

year-old boy working there. On being questioned, the boy shared that he worked from 8 am - 9 pm and was made to wash vessels and clean the hotel. He was not being remunerated appropriately and was being made to work against his wishes. The child was produced before the CWC and was later placed in the Children's Home. However, no document was available on the record about his release from the Children's Home. The accused was tried under Section 79, JJ Act and Section 374, IPC. The boy was not produced in court for his evidence and neither was his statement under Section 161, Cr.P.C recorded. The Chief Judicial Magistrate (CJM) was highly critical of this negligence on the part of the IO, as well as the failure on the part of the Officer-in-charge of the police station to review the chargesheet before it was submitted to the court. The accused had to be discharged at the initial stage itself because of this lapse. The CJM was also of the view that the Assistant Public Prosecutor had failed in his duty to draw attention to the gaps in the chargesheet and return it to the IO with appropriate legal guidance. The CJM directed departmental inquiry against all three⁴⁸ and a copy of this direction was sent to the Director General of Police, State Government, District Collector, Sirohi, Department of Prosecutions and they were asked to inform the court about the action taken within two months of the order.

Conviction even though victim was declared hostile

In *State v. Pavan alias Yogendra*,⁴⁹ a police Sub-Inspector (SI) found a 15-year-old boy making tea in a gas bhatti in a restaurant. The adolescent boy shared that he had been working there for two months for Rs 3000 per month and worked for 12 hours, making and serving tea, and cleaning vessels and the restaurant. The SI did not collect any age-related documents from the child's school

or get any medical age determination test done. Statements of independent witnesses were also not taken. The victim was declared hostile and did not testify against the accused in his examination-in-chief. He stated that he did not know the accused and was not earning any money. He had gone to the accused's shop and since there was no one there to make tea, he made some. During the cross-examination by the prosecution, the victim admitted his signature on the statement recorded by the police and admitted the allegations against the accused and that he was rescued by the police while making tea. Although the accused was not charged under Child Labour (Prohibition and Regulation) Act, 1986, and the Act at it stood in 2015 did not cover adolescents, the Chief Judicial Magistrate observed that work in hotels and dhabas would fall within the purview of hazardous work under the Child Labour (Prohibition and Regulation) Act, 1986. It held that even though the victim had turned hostile, the victim had admitted being employed by the accused. Further, the police witnesses had also corroborated this and photographs were also available. The investigating officer had also produced a copy of the rental agreement of the restaurant. The court observed that the defence had not produced any witnesses to prove that the victim was not employed by the accused or that the accused was not the employer. The accused was convicted under Section 26, JJ Act, 2000. Since the accused did not have any prior convictions and was under probation since 2015, the court gave him the benefit of the Probation of Offenders Act and released him on a bond of two years for peace and good behaviour and a surety of Rs 10,000, on condition that the offence is not repeated and to appear and receive sentence when called upon during such period. The accused was also directed to pay Rs 2000 compensation and was given the benefit of removal of disqualification attached to conviction under Section 12, Probation of Offenders Act.

⁴⁸Order 35, Rule 6 of the General Rules (Civil and Criminal), 2018 - "District Magistrate and Director General of Police to be informed of police errors - When in any case of which a Court has taken cognizance, the Presiding Officer has occasion to notice any erroneous practice on the part of the police or has reason to believe that a confession has been elicited by the police from an accused person by the use of force or undue influence, or that any other grave irregularity has occurred, he shall bring the matter to the notice of the District Magistrate concerned or Inspector General of police/ Director General of Police. It shall be incumbent on the authority so informed to apprise the Presiding Officer concerned of the action taken by it in the matter."

⁴⁹*State v. Pavan alias Yogendra*, Criminal Case No. 680/2015 decided by the Chief Judicial Magistrate in Bundi on 19.11.2020.

Factors that contributed towards Acquittals in Child Labour Cases



Victim declared hostile

- In 18 cases, victims denied the initial statement they had given to the police and stated in court that they were present in the concerned shop or establishment as a consumer or guest or to meet a family member who worked there.



Investigation Gaps

- No independent witnesses were included during the search/rescue operation in 12 cases and no attempt had been made to issue an order in writing under Section 100, CrP.C to ensure an independent witness.
- Documents showing that accused was owner were not seized in 9 cases.
- The site photos were not included in the charge-sheet in 4 cases.



Gaps in Prosecution

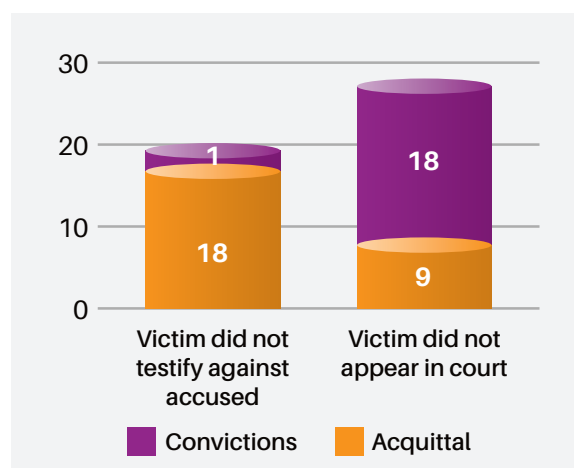
- The victim and victim's parents were not produced in court in 8 cases.
- The age of victim was not established in 3 cases.
- Loopholes in the chargesheet were not identified.

3.5. Nature of Testimony

- **Of the 46 cases, in 19 cases, the victim did not testify against the accused and in 18 of these cases the victim was declared hostile** and in the remaining 27 cases, the child was not produced before the court for evidence. In other words, there was no case in which the victim testified against the accused. CWC Members explained that in many cases of child labour, a compromise is entered into between the employers and the families, as a result of which children retract their initial statement to the police and do not support the case.

- The acquittal rate was exceedingly high, i.e. 94.73% in cases in which the victim did not testify against the accused (18 out of 19 cases) and 94.44% in cases in which the victim was declared hostile (17 out of 18 cases).
- Of the 27 cases in which the victim did not appear before the court for evidence, the victim's testimony was dispensed with by the court in 17 cases in which the accused pleaded guilty. In nine other cases, the prosecution failed to produce the child in court as a witness and this was considered as one of the factors that contributed towards an acquittal.

Fig.3.7 : Victim's testimony vis a vis outcome in Child Labour cases



3.6. Nature of Sentences



None of the accused were sentenced to imprisonment.



They were all released on probation upon submission of bonds.

Conditions for probation were :

- maintain peace and good behaviour,
- do not reoffend, and
- appear and receive sentence when called upon during such period by the court.



The bond period ranged from one to three years



The bond amounts ranged from Rs. 5000-Rs. 20000.



The accused were directed to pay costs of the proceedings ranging from Rs.1000 - Rs.10,000.

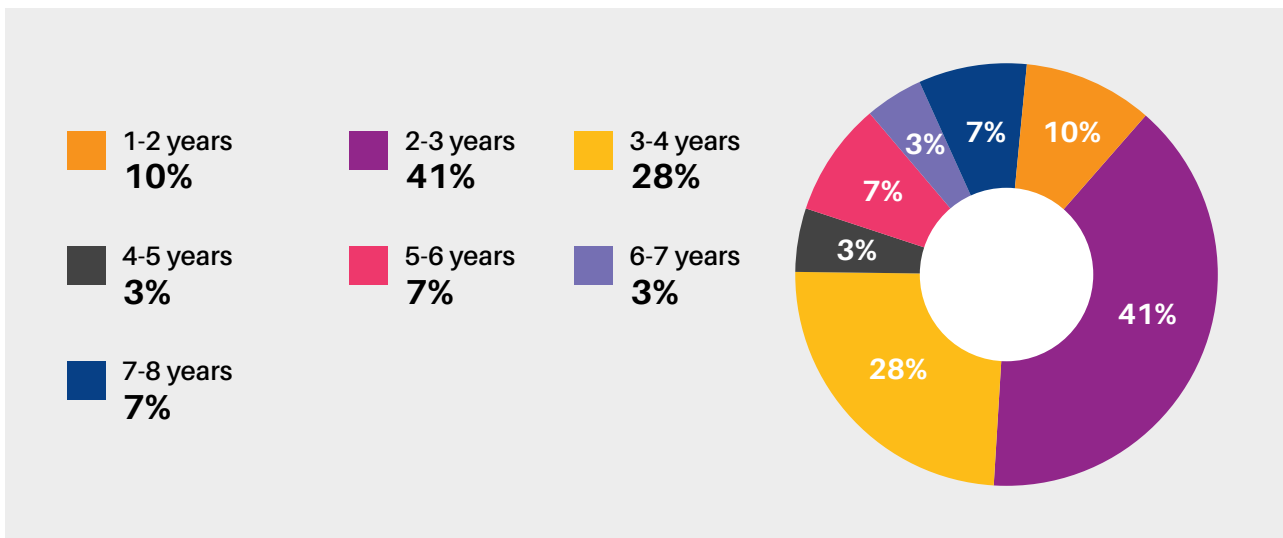


Barring one case, no compensation was ordered to any child in the cases which ended in conviction.

3.7. Time Taken to Dispose Cases

- The time taken for disposal from the date of registration of the FIR/complaint till the final judgment was available in only 29 cases. The average disposal time of cases was three years and four months.
- The longest time taken to dispose of a case was seven years and four months and the shortest time taken to dispose of a case was one year and six months.
- 69% of cases were disposed of between 2-4 years.

Fig.3.8 : Time taken from registration of complaint till final disposal



Challenges faced by stakeholders in cases of Child Labour

- Confusion about when a child or adolescent should be produced before the CWC as CALPRA allows adolescents to work in non-hazardous occupations and processes.
- Compromise between employers and families impacts their effective prosecution.
- Age determination is challenging as the child does not have school records and parents do not always cooperate.
- Restoration to family and transfer to other districts is challenging owing to the delays in home verification, difficulties in tracing family, and the lack of escorts.
- Forced transition of children from education to labour due to COVID.

3.8. Recommendations

For Consideration of Department of Child Rights

- Consider the creation of a support system and assignment of a Support Person for children rescued from labour to assist them during the investigation, trial, and inquiry before the CWC, and rehabilitation.
- Consider initiation of an inter-state dialogue and coordination system to prevent migrant child labour in Rajasthan and for ensuring sustained rehabilitation of children sent back to their native states.
- Consider specific protocols for inter-departmental coordination at a decentralised level on education of rescued child labourers, vocational training of adolescents rescued from hazardous occupations and processes, mitigating health risks among working children, family-based rehabilitation, etc.

- Ensure that monthly convergence meetings of the District Task Force are conducted at the district level with the CWC, police, AHTU, Childline, DCPU, Labour Inspectors, and NGOs to address the bottlenecks and challenges being faced in the response to cases of child and adolescent labour.
- Review the implementation of the SOP for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 issued by the Ministry of Labour and Employment.
- Continuously map the number of children who have left their homes, or dropped out of school during COVID and thereafter, or gotten married with the support of village and district level Child Protection Committees. Based on the survey findings, design interventions to track the children out-of-school and link them to available schemes and entitlements. Ensure targeted life skills and educational interventions for adolescent girls and adolescent boys in identified hotspots.

For Consideration of Department of Home

- Consider a checklist for conduct of rescue operations in cases of child and adolescent labour for the ease of reference of the police/AHTU.
- Commission an evaluation of the working of the AHTU by an independent organisation with a view to assess the effectiveness of the interventions and identify areas for improvement.
- Create a system for regular review meetings to examine the rescues being carried out, the challenges faced, and gaps in investigation and coordination to be attended by representatives of the Labour Department, CWC, Childline, DCPU, and NGOs, followed by corrective action to address the gaps and challenges identified.
- Organise capacity building programmes at regular intervals for police and AHTU through the Rajasthan Police Academy, focused on the relevant statutes on child and adolescent labour including recent amendments; the objective of the statutes and perspective building, the manner of conducting rescue operations; guidance on which child/adolescent should be produced before the CWC; how to strengthen investigation and prepare a robust chargesheet.

For Consideration of Department of Labour

- Consider appointment of Labour Inspectors to exclusively look at child & adolescent labour without additional charges, and connect children and families to education and other benefits, in coordination with DCPU.
- Ensure compliance with Rule 2B(2), CALPRA Rules by the Principals and Head Masters of schools and that the absence of children for 30 consecutive days without intimation is informed to the Nodal Officer specified by the DM.

For Consideration of Department of Education

- Support School Management Committees to track children who are out-of-school, or have dropped out during the pandemic and support them to return to schools.
- Ensure that Rule 2B(2), CALPRA Rules is strictly adhered by the Principals and Head Masters of schools and the absence of children for 30 consecutive days without intimation is informed to the Nodal Officer specified by the DM.
- Conduct training for teachers, principals on child rights, child protection and their role in reporting crimes committed against children.
- Provide mobile schools and hostels for seasonal migrant children accompanying their parents for work so that they can continue their education.
- Conduct awareness programmes for school children on children's rights, and provide key messaging on issues of child marriage, child abuse, and on disclosing crimes against children.

For Consideration of Department of Prosecutions

- Incorporate inputs on gaps in prosecution of labour cases, such as a failure to establish the victim's age, to examine the victim or the victim's parents, to correct lapses in the charge sheet and present relevant documents before the court in training programs for prosecutors.

For Consideration of RLSA

- Consider directing DLSAs to empanel lawyers interested in representing children under the CALPRA Act and conduct orientation and periodic capacity building programmes for such empanelled lawyers.

- Consider instructing DLSAs to make Legal Aid Lawyers available to child victims of child labour to represent them during the trial and also facilitate their access to compensation and reliefs.

For Consideration of Police

- Ensure that an independent witness is included during rescue operations and utilise Section 100, Cr.P.C for this purpose, if necessary.
- Collect necessary documents related to the age of a child victim and seek an order of the CWC/JJB/concerned court if a medical age determination test needs to be conducted.

For Consideration of DCPU

- Initiate dialogue with DCPUs of districts outside Rajasthan from where migrant child labourers, as well as trafficked children are found.

IV. Response of CWCs to Violence against Children

This section offers insights based on the analysis of 21 case files of CWCs pertaining to cases of elopement, child sexual abuse, child labour, child marriage, and protection of a child victim under POCSO Act who was being threatened by the accused. It also draws from interactions with CWCs, Case Workers, ADCPs, and civil society organisations.

4.1. Nature of Inquiries

- CWCs rely on the production report in Form 17, counselling report, and direct interactions with the child to understand the context and decide whether the child is in need of care and protection as per Section 2(14), JJ Act, 2015. The order sheets, however, did not reflect any express determination of whether the child produced before them was a “child in need of care and protection” as defined under Section 2(14), JJ Act, 2015.
- **Elopement Cases:** In elopement cases or cases of child sexual abuse, the child is usually placed in a CCI during the inquiry period. The wishes of the child, willingness of the parent to take the child home, the reasons why the child left home and the behaviour of the parents towards the child are considered before restoring the child to the family.
- **Child Labour:** In child labour cases, the child’s parent is made to sign an undertaking that they will not send their child to work and enroll the child in school or technical education programmes. Some CWCs also write to the labour department and the SDM to take appropriate action based on the case and to ensure the child is paid just wages for the work done.
- **Age determination :** For the purpose of age determination, reliance is primarily placed on school certificates and if it is unavailable, then on the birth certificate. If neither is available, physical appearance is considered or a medical test is done. Challenges include unavailability of documents, different ages being mentioned by parents or in different documents, and in child labour cases where it is claimed that the person is above 18 years and has not attended any school. Conflict in interpretation of the margin of error has arisen in elopement cases where the medical test states that the child is between 18-20 years. The CWC concludes that the person is a child, while the Magistrates concluded she was an adult and handed her custody to her partner. The CWC orders in connection with POCSO cases, however, did not include any express finding on the age of the children or reflect an age-determination inquiry undertaken by the CWCs. Although the girls produced before the CWC were in the age group of 15-18 years, age-related documents were on record in only five of the 12 cases. In two cases, the girls stated that they were above the age of 18 years and in one of these cases, the CWC directed the Superintendent to obtain age-related information from the police. One of the case files analysed was of a child who was transferred from Nari Niketan, where he earlier lived with his mother, to the CCI. The CWC ordered a medical examination for age determination since the child was to be admitted to a school and there was no documentary evidence of his age. Upon receiving the medical report, the CWC issued a birth certificate for the child indicating a date of birth through consensus and cited Section 94(3) of the JJ Act.
- **Appointment of Support Persons :** While some CWC Members shared that there was no list of Support Persons available as yet in their district, others mentioned they had a list of Support Persons who were usually lawyers or panel advocates from the One Stop Centre, or social workers. One view that emerged was that Support Persons need to be appointed only for children who are socially or economically disadvantaged. The analysis of the case files revealed that a Support Person was appointed based on a request from a One Stop Centre, in only one case in which the child was raped by an influential person in a village.
- **Application of best interest principle :** Most CWC Members felt that the best interest of

children lay in their restoration to their biological family and this translates into counselling of the child and the family with the purpose of reunification. Ties with the biological family, education, availability of food and water, the child's consent and wishes and happiness were stated as factors that were considered by CWC members while determining best interest. Other factors that were less frequently considered were physical safety, economic conditions of parents, mental safety, emotional needs and the circumstances of the child. However, a consideration of the above factors was not apparent from the written orders of the CWCs. A cursory reference to "best interest of the child" was found expressly mentioned in six case files wherein it appeared that the wishes of the child to return to her family were considered along with the request by the family to take the child home. The orders did not offer any reasons as to why restoration to the family was regarded as being in the best interest of the child. These cases also reflect the conflation of the best interest principle with the wishes of the child, wherein the child is restored to her family after she expresses her willingness to return home without any consideration of other facets of the best interest principle. For instance, a 17-year-old girl had been placed in the Girl's Home as she was receiving threats from the accused who had allegedly raped her and was pressuring her to compromise the matter. However, the final order does not make any reference to this or the fact that the girl was pregnant and had delivered a child.

- **Use of Forms** : Form 20 - Undertaking by the Parent or Guardian or 'Fit Person' was not available or included in many cases in which the child was restored to the family. In one district, Form 9 under JJ Rules, 2011- Undertaking by the Parent or 'Fit Person' to Whom child is restored, was being used instead of Form 20. In another district, Form 19 included three additional conditions that are not included in the JJ Model Rules. They were as follows:

- *The child will not be married, put in labour, allowed to abort and allowed to beg.*
- *The child will be provided education.*
- *CWC can determine any other condition.*

Conditions requiring them to be permanently residing at their original residence and prohibition on abortion are especially restrictive of freedoms and rights.

Findings based on Counselling Reports

- Lack of uniformity in the way counsellors notes were maintained as a structured format was used in one district, whereas no such format was followed in other districts. Some counselling reports contained the counsellor and child's signature, while others included the signatures of the Superintendent as well.
- Counselling reports were focused on obtaining factual information about the incident that led to the child's production before the CWC. The reports did not provide any indication of the assessment of the psychological well-being, trauma experienced by the child, and the mental health support required. The counsellor's conclusion at the end of the reports were in one line stating what the child wanted - "Girl wants to go with her maternal uncle to the village." or "The girl wants to go home with her mother."
- Some counselling reports revealed personal bias, as well as inadequate understanding of adolescent development and sexuality, and indicated the shaming of girls for leaving their parental home with their partners. In a case involving a girl above 18 years, who was involved in an interfaith relationship, the Counselling Report revealed that the girl had been sexually abused by her maternal uncle. Her parents did not act on her disclosure. Her father had discovered the phone given to her by her boyfriend

and broke it. After her brother discovered the second phone given by her boyfriend, she called him and left home voluntarily with him. She called her mother to inform her that they were both staying in a hotel. Soon after, the police came and took them away. The girl told the police that she wanted to live with him, not her parents. The counsellor concluded that "According to the girl, she is above 18 years. She wants to go with the boy." A later counselling report noted that the girl had been counselled in detail. Further, "the girl was told about the importance of home and family. Earlier she wanted to go with her friend (boy). Now the girl has taken the right decision and has stated she wants to go with her parents. She will go willingly to her parents."

- In child labour cases, the counselling reports included suggestions made by the counsellor which included encouraging children to study well, providing them information about child labour, on social and financial matters and encouraging them to keep good company. Another case where the child was COVID positive, the counselor gave information about COVID, cleanliness and nutrition. The counselor has also recorded that the 'child was told about his family and was motivated to be good'. These suggestions do little to change the circumstances in which the child was put to work and appear prescriptive, especially statements like "child was informed that begging should not be done. He was told to stay with good friends and stay away from bad work. He was asked to get an education."
- In one case, the counselor's report also appeared to make judgments on the child's behaviour without conducting any assessment and mentioned that the child is a 'shaitan' or child speaks lies or that 'his understanding is less for his age'.

4.2. Nature of Dispositions

- **Type of disposition** : Only two disposition measures are effectively considered by CWCs- institutionalisation or restoration to family after counselling. Non-institutional dispositions such as release to a fit person, kinship care, sponsorship, or foster care were not ordered.
- **Time taken for disposal** : The case files pertaining to child labour showed that while some cases were handled within a day, others took much longer. In the child labour cases, this appeared to be dependent on time taken to trace the parents/guardians of the children, based on the available information. There were instances in the case files where the child was produced before the CWC and released to the parents on the same day or very next day. Among the cases dealt with on a single day, there are also cases where the FIR was filed at 2pm, child was produced before CWC at 6 pm, and the affidavit from the mother was also prepared on the same date. Even though the final order indicates that the child and the mother were counselled, it is unclear when that might have taken place and what the counselling process entailed. In cases pertaining to POCSO, matters were disposed of in less than a month in nine cases, within two months in two cases, and within four months in one case. In some cases, girls who had eloped with their partners were released to their parents or family members on the date of production itself. The case file was, however, closed after a week or a month after the CWC was satisfied that the child had adjusted back with the family. Only one case took four months to be disposed of as the girl had run away from her home a second time immediately after being released to her brother. Upon being brought before the CWC again, she had disclosed about the physical abuse being meted out to her by her family members. The girl was ordered to be sent to the Samprekshan Gruh for 14 days quarantine before her placement. However, within 10 days of this order, the girl was again released to her brother based on a request from him and an affidavit from the girl stating that she would obey her family and not maintain any contact with her boyfriend.

4.3. Recommendations

For Consideration of Department of Child Rights

- **Consider preparing checklist** with support from the RSCPS, on conduct of inquiries
- **Consider conducting capacity-building programmes for CWCs** with emphasis on best interest determination, conduct of inquiries, purpose of SIRs and ICPs, communication skills, relevant forms, and writing of orders. Consider including inputs on alternative dispositions and skills for interacting with children with disabilities. There is a **need for specific training on the use of relevant forms** in order to prevent inconsistent or incorrect use of Forms by CWCs. **Rubber stamps that were used by two CWCs claim they are First Class Judicial Magistrates**, and highlights the need to deliberate on how CWCs should present themselves.
- There is a need to create and strengthen an ecosystem of functional structures, personnel and normative standards to operationalise non-institutional care for children.
- **Conditions for remuneration under Bal Mitra Scheme for Support Persons need to be reconsidered** as Rs. 9000 is payable in two parts after the satisfaction of the CWC and only after the evidence of the child is recorded before the Special Court/JJB and the case is disposed of. As pendency is high in POCSO cases, delays in payment may discourage qualified and experienced social workers from coming forward.
- **Secretarial Support needs to be provided** to CWC to assist them with work related to their proceedings and case management.
- **Consider capacity building of counsellors** under the JJ System particularly on trauma-informed approach, child development, child rights, and writing counselling reports.
- **Consider creating case Management protocols** with support from external experts for adoption by CWCs.

For Consideration of CWCs

- **Consider preparation of an SIR** upon the production of a child and consider the SIR before any final disposition is made.
- **Consider recording a clear finding about the age of the person produced before the CWC** and undertake age-related inquiries in accordance with Section 94, JJ Act, 2014. Ensure that no adult is placed in a Children's Home or subjected to procedures meant for children in need of care and protection.
- **Consider recording a "reasoned order"** containing material facts, reports considered, relevant aspects of the SIR, principles considered, views of the child, and the reasons that form the basis of the conclusion of the CWC.
- **Consider indicating the basis** on which the best interest of the child was determined accompanied with an ICP as per Rule 19(17), JJ Model Rules. Reference to follow-up should be included in the final order in accordance with Rule 19(18), JJ Model Rules.
- **Consider ensuring that relevant forms under the JJ Model Rules to be followed** and the case monitoring sheet is maintained.
- **Consider non-institutional alternatives** such as release to a fit person, placement in a fit facility where the child can pursue education or vocational training, award of sponsorship, or placement in foster care.
- **Consider proactively assigning Support Persons in POCSO cases** and not waiting for an application to be moved.
- **Consider proactively recommending special relief** under Rule 8 in POCSO cases and ensuring children's access to legal aid as per Rule 7.
- **Consider coordinating with DLSA to ensure that the fine amount imposed by Special Courts is paid to the victim** in accordance with Rule 10, POCSO Rules, 2020.

V. Conclusion and Way Forward

1. Data comparing trends over 2019 and 2020 indicated that overall crimes registered against children have reduced in 2020, the cases registered on child labour, child trafficking, and child sexual abuse have reduced but those cases registered of missing and abducted children have doubled during the pandemic year. The drop in cases of child labour, child trafficking and child sexual abuse indicates the possibility of limited access to reporting systems, as well as the breakdown of the community response systems. **This underlines the need to ensure that child protection is prioritised during pandemic, or other emergency situations and to invest in strengthening community-based mechanisms and functional village and district level child protection committees.**

2. Sexual abuse against boys remains underreported and they constituted a miniscule number of victims in cases decided by Special Courts under the POCSO Act. **Preventive efforts also need to focus on dismantling socio-cultural barriers and stereotypes that deters disclosure of and action in cases of sexual violence against boys.**

3. Majority of the accused persons in cases under the POCSO Act were known to the victim, and in a significant proportion of these cases, the victim did not say anything incriminating against the accused resulting in acquittals. The access of child victims to Support Persons and legal counsels needs to be enhanced. **Greater convergence is needed between the criminal justice system and the Child Welfare Committee, Support Persons, DCPU and DLSA, so that adequate and consistent social, legal, and psychological support, and witness protection is provided to child victims and their families, particularly in cases in which there is a proximate relationship with the accused.**

4. The existing design of courtrooms does not enable full compliance with child-friendly procedures and results in exposure of the child to the accused or their family. **Vulnerable witness courtrooms need to be in place in all district**

courts and an alternate waiting room with separate entrance needs to be identified for access of child victims, till such infrastructure is created.

5. The continued direct examination of child victims under the POCSO Act by the defence and prosecution, and revelation of their identities in the judgments undermines the protection envisaged under the law. Most POCSO cases take more than one year to be disposed of. **Instructions on how identity can be effectively protected may be issued by the Hon'ble High Court, and capacity building programs for judges and prosecutors can be focussed on operationalisation of child-friendly procedures. Factors contributing to the delay in disposal need to be ascertained and addressed.**

6. The reporting of romantic cases reveal that the majority of the informants are parents of the girls and in these cases the victim rarely testifies against the accused. **Guidance may be needed on sensitive handling of romantic cases to avoid further victimisation and trauma of adolescents involved in such cases**

7. The continued use of the two-finger test, conclusions that the victim was "habituated to sex" and that there were no signs of rape or sexual assault, are contrary to the normative standards on contents of a medical examination report. There is also a wide variation in the manner in which medical age determination is conducted. **This calls for integration of recent legal developments in the curriculum and capacity building programs aimed at medical students and practitioners.**

8. Although the POCSO Act empowers the Special Courts to determine the quantum of compensation, this was rarely exercised in Rajasthan and recommendations were instead made to the DLSA to decide on compensation. This results in child victims having to appear before another forum and go through several procedural formalities to access compensation. **Clarifications on the mandate of the Special Courts to determine compensation**

will help ensure that children receive timely support that can aid their rehabilitation.

9. In decided cases of child labour, lapses during rescue operations, investigation gaps, and the lack of a support system for child and adolescent victims have resulted in poor outcomes in court. The child protection system's response has also been limited in such cases as children are released by CWCs to their families without necessarily linking them to available schemes, or providing them with non-institutional care options. **The gaps in investigation, prosecution, and care and protection of child and adolescent victims of labour needs to be addressed by the Departments of Home, Labour, and Child Rights, by way of capacity building, use of checklists, strengthening of a support system, monitoring meetings, and accountability measures.**

10. The absence of references to basic facts, SIRs, ICPs, best interest determination, and reasons in the final orders by CWCs signal an ad-hoc decision making process, which is contrary to the principles of natural justice enshrined in the JJ Act, 2015. **This urgently calls for capacities of CWCs to be built on procedures to be followed, writing of orders, and making of best interest determinations.**

11. Interactions with stakeholders revealed a need for greater understanding and appreciation of respective roles and responsibilities. **To ensure an effective and coordinated response to violence against children, an integrated capacity building programme at regular intervals in collaboration with the judicial academy and nodal departments, needs to be considered.**

