

# Protection of Children Against Sexual Abuse. Analysis of Indian Legislation from an International Perspective

## Abstract

Children are considered the backbone of any nation, and their well-being is one of the factors necessary for nation-building. Children are to be safeguarded from societal harms. They are granted the protection due to their vulnerable status, ensuring that they are not subjected to abuse. Their age and stage of development can pose various disadvantages and increase the risk of being harmed. Child sexual abuse (CSA) is a grave issue, but remains largely underestimated due to under-reporting, it has been happening from centuries. CSA has only recently been publicly acknowledged as a serious problem around the world, including in India. There are laws in India to address such perpetrators, and appropriate amendments have been made based on inputs from different segments of society. Despite the presence of existing laws, CSA in India has reached epidemic levels. This article examines Indian laws, specifically the Indian Penal Code 1860, the The Protection of Children from sexual Offences Act Act 2012, and the Bhartiya Nyaya Sanhita 2023, from an international perspective. It includes challenges on the major issues such as the “age of consent,” medical examination, and mandatory reporting in cases of child sexual abuse. The paper also assesses how well India has implemented the principles of the United Nations Convention on the Rights of the Child (UNCRC). It highlights the alignment of Indian laws with international standards, as well as the gaps.

**KEYWORDS:** child sexual abuse, challenges, consensual underage sex, the POCSO, the BNS, the NCPRC, the UNCRC

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# 1 | Introduction

World Health Organization (WHO) defines CSA “is a major public health concern globally, including India.” According to the WHO definition of CSA is “as a compulsive act which results in serious physical or psychological harm to a child who is unable to understand or provide consent.”<sup>[1]</sup>

Child sexual abuse includes behaviors such as

inappropriate touching of a child’s private areas, permitting a child to touch the perpetrator’s private areas, acts of molestation, sodomy, exhibitionism, possessing or distributing indecent images (such as child pornography), and participating in cyber sexual activities.<sup>[2]</sup>

Sexual abuse affects all regions and social segments, occurring within families, institutions, or communities. Digital technology’s spread also increases risks, exposing children to potential abuse everywhere.<sup>[3]</sup>

Most often, perpetrators are known to and trusted by the children. Parents often hesitate to report these crimes due to fear of further harm to their children and families. Victims and their families are also discouraged from reporting to the police due to past experiences of police apathy and reluctance to register cases. Lack of awareness about new legal developments among officers also hinders reporting. Furthermore, the lengthy trial process and traumatic experiences in “court, at home, at school, and within the community can demotivate victims and their families from seeking justice for these crimes.”<sup>[4]</sup>

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<sup>1</sup> 54 Regional Committee for Africa, Child Sexual Abuse: A Silent Health Emergency: Report of the Regional Director, 2011. <https://iris.who.int/handle/10665/1878>. [accessed: 3.2.2025].

<sup>2</sup> NSPCC, Sexual Abuse. <http://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/child-sexual-abuse/>. [accessed: 21.8.2024]; Dominika Skoczylas, “Administrative and Criminal Law Aspects of the Protection of Minors in Cyberspace: Selected Issues”. *Prawo i Więź*, no. 5 (2024): 657-675; Skoczylas, Dominika. “Administrative and Criminal Law Aspects of the Protection of Minors in Cyberspace: Selected Issues”. *Prawo i Więź*, no. 5 (2024): 657-675. <https://doi.org/10.36128/PRIW.VI52.607>.

<sup>3</sup> Neela Dabir, Mohua Nigudkar, “Child abuse: Confronting reality” *Economic and Political Weekly*, 42 (2007): 2863. <https://www.jstor.org/stable/4419782>. [accessed: 21.8.2024];

<sup>4</sup> Debarati Halder, *Child Sexual Abuse and Protection Laws in India* (New Dehli: SAGE Publications India, 2018). <https://liveencounters.net/2018-le-mag/09-september-2018/dr-debarati-halder-child-sexual-abuse-and-protection-laws-in-india/>. [accessed: 21.8.2024].

At least 120 million girls all around the world are below the age of 20 years – about 1 in 10 – have been forced to involve in sexual acts, actual figure is although much higher. But there are many victims of sexual abuse, including millions of boys, they never shared the incidence of abuse.<sup>[5]</sup>

The UNCRC safeguards children from all exploitation, including sexual abuse, and has been ratified by 196 countries, excluding the U.S. India signed and ratified the convention on 11 December 1992, committing to align its laws with UNCRC principles.<sup>[6]</sup>

Prior to 2012, sexual offenses against children in India were addressed under the Indian Penal Code (IPC), which lacked specific provisions for child protection. Offenses such as rape, assault, and unnatural acts were covered, but there was no comprehensive definition of sexual offenses against children. In response to the increasing number of CSA cases, the Indian government enacted the “Protection of Children from Sexual Offences (POCSO) Act in 2012.” This legislation aims to “protect children from sexual offenses, harassment, and pornography,” ensuring their welfare and best interests throughout the judicial process, including “child-friendly reporting and the establishment of special courts” for expedited trials.<sup>[7]</sup>

The Bhartiya Nyaya Sanhita (BNS) of 2023, replaces the “IPC of 1860,” introducing a dedicated chapter for offenses against women and children, enhancing punishments, and making some provisions gender-neutral.<sup>[8]</sup>

CSA remains a critical issue in India, necessitating a thorough examination of the legal frameworks designed to address this pervasive problem. As a signatory to the UNCRC, India has an obligation to integrate its principles into domestic law. This paper explores how effectively India has adopted the tenets of the UNCRC within its legal system, identifying both the alignment and gaps that exist between Indian legislation from international standards, through a comprehensive analysis.

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<sup>5</sup> UNICEF India, *Sexual Violence against Children*. <https://www.unicef.org/india/stories/sexual-violence-against-children>. [accessed: 21.8.2024].

<sup>6</sup> UNCRC\_2020.Pdf. [https://nhrc.nic.in/sites/default/files/UNCRC\\_2020.pdf](https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf). [accessed: 3.2.2025].

<sup>7</sup> Jyoti Belur, Brijesh Bahadur Singh, “Child sexual abuse and the law in India: a commentary” *Crime Science*, 4 (2015). <https://doi.org/10.1186/s40163-015-0037-2>. [accessed: 21.8.2024].

<sup>8</sup> Bharatiya Nyaya Sanhita Makes Sexual Offences Gender Neutral; New Clauses for Crime against Children, Women. <https://www.telegraphindia.com/india/bharatiya-nyaya-sanhita-makes-sexual-offences-gender-neutral-new-clauses-for-crime-against-children-women/cid/2031249>. [accessed: 21.8.2024].

## 2 | Child Sexual Abuse-The Global Menace

CSA refers to “any interaction between a child, and or an adult or with another child in which a child is used for sexual gratification of the abuser or an observant and in which one exerts power over child” CSA “includes all types of sexual victimization of children penetrative or non-penetrative, sexual harassment, sexual intercourse, pornography, commercial sexual exploitation, online exploitation and sex tourism.”<sup>[9]</sup>

Sexual abuse can be emotional, verbal and physical in nature.<sup>[10]</sup> It can include both contact and non-contact behaviors and can involve a wide range of behaviors including and not limiting to Masturbation or one forces a child to strip, inappropriate touching, watching pornography in front of child, capturing and sharing sexual pictures of child, storing sexual pictures of child, forcing child to perform a sexual act in front of web camera or recording any device.<sup>[11]</sup>

Children comprising 40% of India's population, the country ranks as the sixth most unsafe country for children. To assess the extent of child, abuse in India, a study was conducted in 2007 by the Ministry of Women and Child Welfare, with support from the United Nations Children's Fund, Save the Children, and Prayas. The study revealed that 53.22% of children experienced at least one type of sexual abuse. Within this group, boys accounted for 52.94% of the victims, while girls made up 47.06%. According to the National Crime Records Bureau (NCRB) report on crimes against children child rape and penetrative assault cases in India rose to 38,911 in 2022 from 36,381 in 2021. Previous years' number of cases in India were 30,705 (2020), 31,132 (2019), 30,917 (2018), 27,616 (2017), and 19,765 (2016), CSA cases, have increased by 96% from 2016 to 2022, which covers various forms of penetrative assaults.<sup>[12]</sup> Moreover, “Uttar Pradesh, Maharashtra,

<sup>9</sup> Kathryn C. Seigfried-Spellar, Virginia Soldino, “Child sexual exploitation: Introduction to a global problem,” [in:] *The palgrave handbook of international cyber-crime and cyberdeviance*, ed. Thomas J. Holt, Adam M. Bossler (London: Palgrave, 2020). [https://doi.org/10.1007/978-3-319-78440-3\\_53](https://doi.org/10.1007/978-3-319-78440-3_53). [accessed: 22.8.2024].

<sup>10</sup> Thriveadmin, “What Is Child Sexual Abuse?” (*Bravehearts*). <https://bravehearts.org.au/about-child-sexual-abuse/what-is-child-sexual-abuse/>. [accessed: 3.2.2025].

<sup>11</sup> RAINN, *Child Sexual Abuse*. <https://rainn.org/articles/child-sexual-abuse>. [accessed: 22.8.2024].

<sup>12</sup> “Child Rape Cases: Child Rape Cases Soar by 96 per Cent from 2016 to 2022 Due to Higher Reporting: CRY Analysis” *The Economic Times*. <https://economictimes.indiatimes.com/news/india/child-rape-cases-soar-by-96-per-cent-from-2016-to-2022-due-to-higher-reporting-cry-analysis/articleshow/107202636.cms?from=mdr>. [accessed: 22.8.2024].

Madhya Pradesh, Tamil Nadu and Rajasthan are the states with the highest number of CSA cases reported.”<sup>[13]</sup>

CSA is a serious issue, and it has recently assumed global concern. The cases of CSA mostly go unreported due to the influence of socio-cultural practices as a societal pressure, fear of indignity, loss of source of income which results in disclosure of such offences.<sup>[14]</sup>

## 3 | Child Sexual Abuse: The Legal Regime in India

### 3.1. Indian Penal Code 1860

Until 2012, the IPC addressed CSA through only three general provisions, none of which were specifically tailored to protect children. The only crimes which were registered for sexual offences against children were rape under “Section 376, sexual intercourse without consent, the IPC,<sup>[15]</sup> assault or criminal force to woman with intent to outrage her modesty under Section 354 of the IPC,”<sup>[16]</sup> “Unnatural Acts” defined as “carnal intercourse against the order of nature with any man, woman or animal” “anal sex, homosexuality or bestiality – Section 377 of the IPC.”<sup>[17]</sup> Section 509 under “the IPC<sup>[18]</sup> Word, gesture or act intended to insult the modesty of a woman.”

According to Delhi High Court “other forms of non-penetrative sexual assaults, harassment, and exploitation were not recognized or recorded if reported, in *State vs Pankaj Choudhary*.<sup>[19]</sup>” The defendant could only be charged with “outraging the modesty of a woman” for digitally penetrating

<sup>13</sup> “Pocso Cases: Maximum Number of Pocso Cases: 22 Registered Each Day” *Agra News – Times of India*. <https://timesofindia.indiatimes.com/city/agra/maximum-number-of-pocso-cases-22-registered-each-day/articleshow/105739493.cms>. [accessed: 3.2.2025].

<sup>14</sup> Rajeev Seth, RN Srivastava, “Child sexual abuse: Management and prevention, and protection of children from sexual offences (POCSO) Act” *Indian Pediatrics*, 54 (2017): 1003–1007.

<sup>15</sup> Indian Penal Code 1860, s. 376.

<sup>16</sup> Indian Penal Code 1860, s. 354.

<sup>17</sup> Indian Penal Code 1860, s. 377.

<sup>18</sup> Indian Penal Code 1860, s. 509.

<sup>19</sup> *State vs. Pankaj Chaudhary*, 813 Delhi HC (2011).

a 5-year-old child's anus and vagina the High Court ruled that digital penetration was not considered rape under the IPC, leading to an unsuccessful prosecution based on lack of evidence.

### 3.2. Tarkeshwar Sahu vs. State of Bihar<sup>[20]</sup>

In this case, the complainant was a 12- or 13-year-old female milk vendor who was engaged in milk distribution. The accused, who had been reclining on a bed, arose and secured the door from the interior. Subsequently, he removed his attire and the complainant's undergarment, lifted her, placed her on the bed, and positioned himself atop her thorax. He obstructed her mouth with his hand to suppress her vocalizations and positioned his genitalia against hers. No penetration occurred. The complainant struggled and vocalized, prompting the accused to desist. She then arose, unfastened the door, and exited. The court determined that the accused was not culpable of attempted rape but of indecent assault.

In the case of Sakshi vs. UOI.<sup>[21]</sup> The NGO Sakshi filed a petition to expand rape definition in cases of child abuse involving object insertion or penetration. Supreme Court rejected the plea but issued Sakshi guidelines for CSA trials, including a screen to shield victims from the accused, written questions for cross-examination, and breaks for victims during testimony.

From the increasing incidence of CSA cases which are annually reported on the issues of sexual assault, sexual harassment, and penetrative sexual assault. it is evident that there was a need of new legislation which will specifically deal with CSA case.

### 3.3. Loopholes in the IPC while dealing with child sexual abuse

The IPC of 1860 lacked gender neutrality, excluding male children from Section 376 protections, and proved ineffective in preventing child sexual abuse. Major challenges included the absence of a comprehensive CSA definition, inadequate protection for children abused by family members, and insufficient measures in the "Information Technology Act of 2000" for combating online child abuse. The legal framework also lacked specialized

<sup>20</sup> Tarkeshwar Sahu vs. State of Bihar, 8 SCC 560, (2006).

<sup>21</sup> Sakshi vs. Union of India (UOI) and Ors. AIR 3566 (SC), 2004 (2) ALD Cri 504.

courts for CSA cases and provisions to promote awareness and reporting, underscoring the need for dedicated legislation to address these gaps in child protection.

The government has acknowledged the prevalence of CSA when a 2007 the study titled “Study on Child Abuse”: conducted by ‘India’s Ministry of Women and Child Development’ revealed that “53.22% of children were subjected to sexual abuse, with the highest rates reported among both boys and girls in Andhra Pradesh, Assam, Bihar, and Delhi severe abuse affected 21.9%, while 5.69% faced sexual assault.”<sup>[22]</sup> Known or trusted individuals were perpetrators in 50% of cases.

In 2007 the National Commission for Protection of Child Rights (NCPCR) was framed just about this time. The first case was filed after the establishment of NCRCP was when “a 2 years old girl has been molested on building site in Jharkhand in which the parents of a victim incurred expenses of 80,000 for treatment at Tata Hospital, and a year later, the child underwent another surgery, for which the hospital waived all medical fees following a recommendation from the NCPCR.”<sup>[23]</sup>

In January 2006 a 35-year-old man namely Ramkisan Harijan offered to babysit 10-month-old daughter for the night. The couple were working and they were having night duties they handed over the infant to Ramkisan to babysit their 10-month old child. In the next morning, they got her bleeding with her uterus severely damaged, she was being repeatedly raped and sodomized. In another example, “a 6-year-old child was repeatedly sexually assaulted by her father and when her mother took courage to file a complaint against her husband neither the police nor the hospital took the matter seriously.”<sup>[24]</sup>

Again, “a 13-year-old girl was raped by the headmaster of her ashram girls hostel in Koraput District, Orissa.” Threatened to silence, the victim revealed the abuse after returning home. After one month, complaint was registered and by medical examination rape was confirmed. Local politicians threatened the family and offered a bribe to settle the matter.

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<sup>22</sup> Swace Digital, “Study on Child Abuse: India 2007” *Save the Children’s Resource Centre*. <https://resource-centre.savethechildren.net/pdf/4978.pdf/>. [accessed: 24.8.2024].

<sup>23</sup> “From the India Today Archives (2007): How Safe Is Your Child from Abuse” *India Today*, 11 March 2023. <https://www.indiatoday.in/india-today-insight/story/from-the-india-today-archives-2007-how-safe-is-your-child-from-abuse-2345223-2023-03-11>. [accessed: 25.8.2024].

<sup>24</sup> Ibidem.



The NCPCR intervened, leading to charges against the perpetrators, arrests, and a CBI inquiry. The Commission also issued directives for the victim's medical care, education, and rehabilitation. The case underscores the challenges faced by the Commission in ensuring timely justice for child victims<sup>[25]</sup>

Framing of the POCSO – Before passing a separate legislation on CSA the committee takes note on the existing laws which protects children from sexual abuse like the IPC 1860, the Immoral (Traffic) Prevention Act, 1956 the Information Technology (Amendment) Act, 2008. However, these laws do not acknowledge offenses like “sexual assault, sexual harassment, or child sexual harassment.” Furthermore, there are no such provisions for protecting boys against sexual abuse.<sup>[26]</sup>

The committee was directed to conclude a review of legislation from various countries regarding CSA. The committee reviewed CSA laws from various countries. They focused on clear definitions of offenses, proportionate punishments, special provisions for abuse by persons in authority, and child-friendly judicial processes. The committee noted specific laws in the UK, USA, Ireland, and South Africa that addressed sexual offenses against children.<sup>[27]</sup>

In the light of these considerations, the Ministry debated amending the IPC to include a separate chapter on CSA, drawing from international practices. After consulting the Law Commission, State Commission, and various stakeholders, they determined that amending the IPC would be lengthy. Consequently, a consensus emerged to draft a special law aimed at protecting children from sexual offenses and serving as a strong deterrent against such crimes.<sup>[28]</sup>

The Ministry of Women and Child Development circulated the draft in 2009 “Offences Against Children Bill” with officials. In 2010, following input from National Advisory Council, the Ministry tasked the NCPCR with drafting a law specifically addressing child sexual offenses. Recognizing the unique vulnerability of child victims, often unable to report abuse because of fear and social dishonour, the NCPCR recommended legal amendments. Through consultations with experts across various fields, the draft evolved

<sup>25</sup> Ibidem.

<sup>26</sup> SCR\_Protection\_of\_Children\_from\_Sexual\_Offences\_Bill\_2011.Pdf. [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2011/SCR\\_Protection\\_of\\_Children\\_from\\_Sexual\\_Offences\\_Bill\\_2011.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2011/SCR_Protection_of_Children_from_Sexual_Offences_Bill_2011.pdf). [accessed: 24.8.2024].

<sup>27</sup> Ibidem.

<sup>28</sup> Ibidem.



into the Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012 to safeguard children's rights and deliver timely justice.<sup>[29]</sup>

## 4 | Protection of Children from Sexual Offences (POCSO), Act 2012

### 4.1. Characteristics of POCSO, Act 2012

The POCSO Act, 2012 is a gender-neutral law protecting children under 18 years of age from all forms of sexual abuse, including assault, harassment, trafficking for sexual purposes, and use in pornography. It categorizes offenses by severity, providing punishments up to life imprisonment or death. The Act emphasizes child-friendly procedures to avoid re-victimization, including special provisions for recording evidence, expediting trials, and ensuring anonymity. Special Courts determine compensation to cover victims' medical and rehabilitation needs. Medical examinations must proceed without delay or legal formalities, with mandatory reporting of abuse cases, and hospitals cannot deny treatment.<sup>[30]</sup>

The POCSO Act mandates immediate medical examinations for child sexual abuse (CSA) cases, without requiring prior legal documentation, and obligates doctors to register a medico-legal case. Section 21 of the POCSO Act,<sup>[31]</sup> provides failure to report CSA cases which can result in a punishment of up to six months in imprisonment and a fine. Indian law prohibits hospitals from refusing treatment for CSA victims, reinforced by the Section 357C of the Criminal Law Amendment 2013 Act, which added to the CrPC,<sup>[32]</sup> requiring hospitals to provide immediate, free treatment to CSA and rape victims, underlined by the IPC<sup>[33]</sup> Section 166B.

<sup>29</sup> Ibidem.

<sup>30</sup> Sydney Moirangthem, Naveen C Kumar, Suresh Bada Math, "Child Sexual Abuse: Issues & Concerns" *Indian Journal of Medical Research*, 1 (2015): 1. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/>. [accessed: 24.8.2024].

<sup>31</sup> The Protection of Children from sexual offences Act, 2012 s.21.

<sup>32</sup> Code of Criminal Procedure 1973 s. 357.

<sup>33</sup> Indian Penal Code, 1860 s.166B.

## 4.2. Challenges in the POCSO, ACT 2012

### 4.2.1. Consensual sexual intimacy

Under the POCSO, ACT 2012 consensual sexual intercourse between two adolescents or between an adolescent and an adult is considered illegal. The Act does not provide any exception regarding sexual intercourse between persons under 18 years of age irrespective of age, gender, marriage status of victim/accused. It is proposed that “consensual sexual acts” that could be classified as “penetrative sexual assault” should not be treated as an offense when they occur between two consenting adolescents; otherwise, both individuals would be subjected to charges under the POCSO Act, 2012. The Criminal Amendment Act, 2013<sup>[34]</sup> provides under the IPC the “age of consent” for sexual intercourse which is 18 years, if any individual under the age of 18 years” age involves any consensual sexual acts will be charged under Rape. This has led to increasing number of pending the POCSO cases related to romantic relationships. Additionally, the POCSO Act lacks a clear age of consent for sexual intercourse. Another serious consequence is that obstetricians and gynecologists are required to report all medical termination of pregnancy (MTP) cases involving individuals under 18 years old.<sup>[35]</sup>

### 4.2.2. Child Marriage

In India, child marriage is prohibited by secular law, though it is permitted under certain personal laws in complicated matter. The POCSO Act also prohibits child marriage and its consummation. However, in some cases, the court allows for the marriage between the victim and the accused if both or either party is less than 18 years of age. There is currently no clarity on this issue when the law is open for amendment.<sup>[36]</sup>

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<sup>34</sup> Manupatra, *Analysis of the Criminal (Amendment) Act, 2013*. <https://articles.manupatra.com/article-details?id=undefined&ifile=undefined>. [accessed: 24.8.2024].

<sup>35</sup> Vijaykuma Harbishettar, Suresh Bada Math, “Violence against women in India: comprehensive care for survivors” *Indian Journal of Medical Research*, 2 (2014): 157. [https://journals.lww.com/ijmr/fulltext/2014/40020/Violence\\_against\\_women\\_in\\_India\\_\\_Comprehensive.1.aspx](https://journals.lww.com/ijmr/fulltext/2014/40020/Violence_against_women_in_India__Comprehensive.1.aspx). [accessed: 25.8.2024].

<sup>36</sup> Ibidem.

#### 4.2.3. Consent for Medical examination

The POCSO, Act is silent on the issue when a child or an adolescent victim refuse to undergo for medical examination and it does not give a clear direction.<sup>[37]</sup>

#### 4.2.4. Medical Examination

Section 27 of the POCSO,<sup>[38]</sup> Act mandates that in case of a female child victim the female doctor should do the medical examination. There is no provision for when a female doctor is not available for medical examination of child victim. However, the law states that the available medical officer should provide medical examinations. Under Section 166A of the IPC provides that the available medical officer should without fail should do the medical examination of a rape victim. The conflicting situation arises when the female doctor is not available.<sup>[39]</sup>

#### 4.2.5. Training

There is an urgent need under the POCSO Act to give proper training to judicial officers, police, advocates, medical officers, and teachers. Handling of cases of child victims by unspecialized police, Judicial officers and prosecutors who are not properly trained in justice for children, children's rights or how to communicate with victim children and their families. There is also a need to train primary health care doctors and medical undergraduates in conducting child friendly interviews, collecting evidence and regular checkup.<sup>[40]</sup>

#### 4.2.6. Reporting

It has been found that most of the cases of CSA go unreported. However, knowing and reporting the CSA is incredibly difficult for families and survivors and highly personal decision for both victim and family. The fear of secondary victimization because of criminal justice system, medical

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<sup>37</sup> Ibidem.

<sup>38</sup> The Protection of Children from Sexual Offences Act, 2012 s.27

<sup>39</sup> Supra (n 35).

<sup>40</sup> Ibidem.

examination and societal pressure keeps them silent. There is also lack of awareness regarding CSA. Many of the people do not know the procedures and guidelines for filing CSA cases. Furthermore, some families and victims are unable to file cases due to poverty and lack of access to legal aid because the relevant agencies are not engaged at the appropriate stage in the process.

The POCSO Act, being gender-neutral, provides protection against sexual abuse for both boys and girls. While boys, like girls, are the victims of sexual abuse, there is often a lack of reported cases due to various societal factors. This underreporting highlights the need for greater awareness and support for male victims as well.

The POCSO Act of 2012 is a commendable piece of legislation that addresses nearly every recognized form of sexual abuse against children an unlawful offense; a few challenges remain to be addressed. A multidimensional, multi-agency team and multi-tier strategy, including access to psychological support, would be implemented to provide holistic and comprehensive treatment for victims of child sexual abuse (CSA) under one roof.<sup>[41]</sup>

## 5 | Bhartiya Nyaya Sanhita, 2023

In August 2023, the government introduced three new bills to replace the three major existing laws in India. These are the Bhartiya Sakshya Bill, 2023 (BS), The Bhartiya Nyaya Sanhita (BNS) 2023, and the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS). The purpose of these bills is to replace colonial-era laws, specifically the Indian Evidence Act of 1873, the IPC of 1860, and the Code of Criminal Procedure of 1973. These bills “were passed by parliament on 20 and 21 December 2023, which received the Presidential assent on 25 December 2023 and was enforced from 1 July 2024.”<sup>[42]</sup>

<sup>41</sup> Ibidem.

<sup>42</sup> The Bharatiya Nyaya (Second) Sanhita, 2023” PRS Legislative Research. <https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023>. [accessed: 25.8.2024].

## 5.1. Protection of Children from Sexual Offences Under the BNS 2023

The new criminal code in India, the BNS, 2023 has been categorized into 20 chapters with 358 sections as compared to the IPC 1860 which had 511 sections and 22 chapters organized. Some sections of the IPC such as like Section 377<sup>[43]</sup> of the IPC, Section 124A of the IPC,<sup>[44]</sup> Section 309 of the IPC<sup>[45]</sup> were not added in the BNS 2023 due to colonial nature. The first change made in the name of the code; the IPC represents punishment while as the BNS stands for Nyaya which means Justice.

The newly enacted criminal law introduces a clear definition of the term “child” for the first time and defines child as “any person who has not completed the age of 18 years.” The term child has been mentioned ninety-six times in the IPC and no such specific definition was provided. The BNS 2023, includes a distinct chapter dedicated to offenses against woman and children. It categorizes gender into three categories like man, women and transgender. In the definition of rape, a change has been made by changing the age of consent of wife for sexual intercourse from 15 to 18 years “sexual intercourse by a man with his own wife” under Section 63 of the BNS<sup>[46]</sup> Act 2023 previous section 375 of the IPC<sup>[47]</sup>. New provision to the BNS has been added, Section 69 of the BNS<sup>[48]</sup> “sexual intercourse by employing deceitful means.” Section 376DA of the IPC has been amended to increase the age limit for female victims of gang rape from 16 to 18 years. The punishment has also been intensified, changing from imprisonment for life with a fine to imprisonment for the remainder of the offender’s natural life with a fine, or the death penalty. Section 70(2) of the BNS<sup>[49]</sup> which provides Disclosure of identity of the victim of certain offences, the word “minor” is replaced by “child” under section 72 of the BNS<sup>[50]</sup> 2023.

<sup>43</sup> IPC Section 377 – Unnatural Offences (n 17).

<sup>44</sup> Indian Penal Code, 1860 s. 124A.

<sup>45</sup> Section 309 in The Indian Penal Code, 1860 s.309.

<sup>46</sup> Bhartiya Nayay Sanhita , 2023 s.63.

<sup>47</sup> Indian Penal Code, 1860 s. 375.

<sup>48</sup> Bhartiya Nayay Sanhita, 2023 s. 69.

<sup>49</sup> Bhartiya Nyaya Sanhita, 2023 s.70(2).

<sup>50</sup> Bhartiya Nyaya Sanhita, 2023 s.72.

Some provisions have made gender neutral for example “Section 354B of the IPC<sup>[51]</sup> Assault” or use of criminal force to woman with intent disrobe has changed to “Whoever” is replaced by “Any man” now section 76 of the BNS<sup>[52]</sup> Section 354C of the IPC<sup>[53]</sup> – Voyeurism “Whoever” is replaced by “Any man.” These words have been excluded “from that man or from any person having the care of her on behalf of that man” under “Section 498 of the IPC<sup>[54]</sup>”, “Enticing or taking away or detaining with criminal intent a married woman now under Section 84 of the BNS.”<sup>[55]</sup> Moreover, a “new provision has added under section 95 of the BNS<sup>[56]</sup>, Hiring, employing or engaging a child to commit an offence.”<sup>[57]</sup>

Procuration of child under section 366A of the IPC<sup>[58]</sup> has made gender neutral it excluded the words “minor girl” under the age of 18 years and replaced by the word “minor.” In the heading the section 372 of the IPC,<sup>[59]</sup> Selling minor for purposes of prostitution, etc. The word “child” replaced the word “minor.” The word “child” is used in place of “any person under the age of eighteen years” now under section 98 of the BNS<sup>[60]</sup>. Furthermore, “buying minor for purposes of prostitution under section 373 of the IPC<sup>[61]</sup>” Words “any person under the age of eighteen years” are replaced by the word “child” now under section 99 of the BNS.<sup>[62]</sup> Kidnapping from lawful guardianship under section 361 of the IPC<sup>[63]</sup> age differential is removed from whoever takes or entices any minor if “male below the age of 16 years, and if female under the age of 18 years” to whoever takes or entices any child below 18 years of age – Kidnapping section 137 of the BNS.<sup>[64]</sup> According to Section 366B of the IPC<sup>[65]</sup>, “Importation of Girl from Foreign Country”

<sup>51</sup> Indian Penal Code, 1860 s.354B.

<sup>52</sup> Bhartiya Nyaya Sanhita, 2023 s. 76

<sup>53</sup> Indian Penal Code, 1860 s.354C.

<sup>54</sup> Indian Penal Code, 1860 s.498.

<sup>55</sup> Bhartiya Nyaya Sanhita, 2023 s.84.

<sup>56</sup> Bhartiya Nyaya Sanhita, 2023 s.95.

<sup>57</sup> Yeshwant Naik, “The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India’s New Penal Code” *Social Science Research Network*, 3 July 2024. <https://papers.ssrn.com/abstract=4884622>. [accessed: 24.8.2024].

<sup>58</sup> Indian Penal Code, 1860 s.366A.

<sup>59</sup> Indian Penal Code, 1860 s.372.

<sup>60</sup> Bhartiya Nyaya Sanhita, 2023 s.98.

<sup>61</sup> Indian Penal Code, 1860 s.373.

<sup>62</sup> Bhartiya Nyaya Sanhita, 2023 s.99.

<sup>63</sup> Indian Penal Code, 1860 s.361 ‘IPC Section 361.

<sup>64</sup> Bhartiya Nyaya Sanhita, 2023 s.137.

<sup>65</sup> Indian Penal code, 1860 s.166B.

has made gender neutral, “Importation of Girl or Boy from foreign country where the age for boys is below 18 years of age and age for girls is below 21 years” Section 141 of the BNS.<sup>[66]</sup> Nevertheless, “Trafficking of Person under section 370 of the IPC<sup>[67]</sup>” the word “child” is added in place of “minor” – Section 143 of the BNS.<sup>[68]</sup> “Trafficking of Person under section 370 of the IPC<sup>[69]</sup>” the upper limit punishment is enhanced from 7 years’ imprisonment to 10 years in place of “minor” the word “child” is added.<sup>[70]</sup>

## 5.2. Challenges in the Existing Bhartiya Nyaya Sanhita 2023 – Sexual Offences

### 5.2.1. Gender-based policies

In the IPC, the definition of rape is gender-specific, designating women as victims and men as offenders.<sup>[71]</sup> Section 377 of the IPC<sup>[72]</sup> is the sole provision among various statutes that penalizes sexual violence against men, yet it is not included in the BNS. The offense of “rape” is addressed under Section 63 of the BNS,<sup>[73]</sup> which does not extend protection to males against sexual assault. This provision in the newly enacted legislation contravenes the principles of gender neutrality and contradicts the objective of passing of the bills in the Parliament of India.

It can be concluded that the BNS does not adequately penalize sexual violence against men. Under the BNS, gender is categorized into three classes: man, woman, and transgender (Cl. 2(9), the BNS, “Gender”; in the explanation, s. 2(k) of the Transgender Persons Act, 2019).<sup>[74]</sup> The term “transgender” refers to a trans woman, regardless of whether she has undergone sex

<sup>66</sup> Bhartiya Nyaya Sanhita 2023, s.141

<sup>67</sup> Indian Penal Code, 1860 s. 370.

<sup>68</sup> Bhartiya Nyaya Sanhita, 2023 s.143.

<sup>69</sup> Ibid (n 67).

<sup>70</sup> Comparison of the BNS 2023 and the IPC 1860’ (B&B Associates LLP). <https://bnblegal.com/article/comparison-of-bharatiya-nyaya-sanhita-bns-2023-and-indian-penal-code-ipc-1860/>. [accessed: 25.8.2024].

<sup>71</sup> Committee Reports” PRS Legislative Research. <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>. [accessed: 25.8.2024].

<sup>72</sup> Supra (n 17).

<sup>73</sup> Supra (n 46).

<sup>74</sup> Transgender Persons (Protection of Rights) Act, 2019 s.2(k).



reassignment surgery. Any person who identifies as a woman but was not assigned female at birth is not considered female. This group is “excluded from the definition of ‘women,’ resulting in sexual violence against them not being recognized as rape.”<sup>[75]</sup> Additionally, “there is no equivalent to Section 377 of the IPC in the BNS, and the bill does not impose penalties for sexual assault committed against transgender individuals.”<sup>[76]</sup>

The objectives and rationale of the BNS highlight that several offenses have been made gender-neutral; however, this shift does not apply to rape. Within the IPC, two provisions related to criminal force and assault against women have been adapted to a gender-neutral approach: the use of criminal force with intent to disrobe Section 75, the BNS<sup>[77]</sup> and voyeurism Section 76, the BNS.<sup>[78]</sup>

### 5.2.2. Punishment Enhanced

The bill suggests an age-based classification for rape victims, drawing from the IPC and the POCSO, and establishes different sentencing options for cases of rape involving minors under the age of 18<sup>[79]</sup> IPC 1860 Section 376; the BNS 2023 Section 64(1); the POCSO Act Section 4(1), under the age of 16<sup>[80]</sup> IPC 1860, Section 376(3); the BNS 2023, Section 65(1); the POCSO Act 2012 Section 4(2); and under the age of 12 IPC 1860, Section 376AB; the BNS

<sup>75</sup> Raped, mocked by Police for Seeking Justice: India's Rape Laws Do Not Cover Transwomen. <https://article-14.com/post/raped-mocked-by-police-for-seeking-justice-india-s-rape-laws-do-not-cover-transwomen--62c65919a04a3>. [accessed: 25.8.2024].

<sup>76</sup> Transgender Persons (Protection of Rights) Act, 2019 s.18.

<sup>77</sup> Bhartiya Nyaya Sanhita ,2023 s.75.

<sup>78</sup> Bhartiya Nyaya Sanhita ,2023 s.76.

<sup>79</sup> Indian Penal Code, s.376(3); Bhartiya Nyaya Sanhita 202; s. 65(1); and the Protection of Child from sexual offence Act 2012, s. 4(2), outline sentencing options that include rigorous imprisonment for twenty years, life imprisonment (defined as imprisonment for the remainder of the offender's natural life), and the imposition of a fine.'

<sup>80</sup> Indian Penal Code,1860 s.376A; Bhartiya Nyaya Sanhita ,2023 s. 65(2); and the Protection of children from sexual offences Act,2012 s. 5(m) in conjunction with s. 6, provide sentencing options that include imprisonment for twenty years, life imprisonment (defined as for the remainder of the offender's natural life), a fine, and the death penalty.'

Act 2023, Section 65(2); the POCSO Act 2012 Section 5(m))<sup>[81]</sup> among IPC, the POCSO and the BNS.

### 5.2.3. Gang rape of women under the age of 18

The BNS provides new provision under section 70(2) Gang rape of women under the age of 18 years and merges Section 376DA<sup>[82]</sup> and 376DB<sup>[83]</sup> of IPC and increased age of women from 16 to 18 years of age and enhanced punishment with death or with whole life sentence. This category of offence is considered as an aggravated offence, under the POCSO Act 2012 and same position under the BNS. Under Section 376DB of the IPC currently provides a sentencing option for gang rape involving a minor under the age of 12. However, the BNS does not include the death penalty as an option for cases of gang rape involving older women.

### 5.2.4. Age of Consent for married women

Since 1940, Exception II of Section 375 (Rape) in the IPC<sup>[84]</sup> has stated that a man is permitted to have sexual intercourse with his wife, provided she is not below 15 years of age. Hence if a wife is over 15 years of age husband cannot be guilty of rape. The criminal law amendment Act 2013 has increased the age of consent for sexual intercourse for a wife from 15 to 16 years of age under section 375 (Rape) Exception II of the IPC. However, in 2023, further changes were made by the parliament by increasing the age of consent for a wife from 16-18 years under Section 63 (Rape) Exception II of the BNS<sup>[85]</sup> 2023.

Two classes of girl children are thus created. A married girl child is considered to have consented to sexual relations with her husband between the ages of 15 and 18 years, even if she does not genuinely consent. Any sexual

<sup>81</sup> Indian Penal Code, 1860 s. 376AB; Bhartiya Nyaya Sanhita '2023 s. 65(2); and the Protection of children from sexual offences Act, 2012 s. 5(m) read with s. 6, specify sentencing options, which include imprisonment for twenty years, life imprisonment (meaning for the remainder of the offender's natural life), a fine, and the death penalty.'

<sup>82</sup> Indian Penal Code, 1860 s. 376DA.

<sup>83</sup> Indian Penal Code, 1860 s. 376DB.

<sup>84</sup> Indian Penal Code, 1860 s. 375.

<sup>85</sup> Supra (n 46).

interaction – with or without consent – between an unmarried girl child between the ages of 15 and 18 would be considered statutory rape.<sup>[86]</sup>

The change in the age of consent introduces confusion by permitting “sexual intercourse between a husband and his minor wife over 15 years old,” while simultaneously attempting to implement the Supreme Court’s ruling.<sup>[87]</sup>

### 5.2.5. Sexual Intercourse by Employing Deceitful Means

Section 69 of the BNS<sup>[88]</sup> 2023, criminalizes sexual intercourse, not amounting to rape. It includes “whoever by deceitful means or making a promise to marry a woman without intention to fulfilling the same, leading to imprisonment upto 10 years and a fine.” The explanation defines “deceitful means” to include false promises of employment or promotion, or marriage by concealing one’s identity. Section 69 of the BNS<sup>[89]</sup> 2023 is gender-neutral regarding the accused, using the term “whoever,” meaning that a woman making false promises of employment or promotion to another woman to engage in sexual intercourse could also be penalized under this provision.

On one side the law is gender neutral, but it does not apply to Transgender same was held in Bhupesh Thakur vs. State of Himachal Pradesh<sup>[90]</sup>. In this case one person namely Bhupesh Thakur he promises to marry a transgender woman but later changed his mind case was filed against him and was taken before the court. The matter went before to the Hon’ble Himachal Pradesh High Court to decide whether section 69 of the BNS<sup>[91]</sup> 2023 whoever makes a promise to marry to get someone into a relationship, could be used by a transgender person? The question remains unanswered.

The court ruled that the law in question applies only to “women,” and since the complainant is a transgender woman, she is not covered by Section 69 of the BNS<sup>[92]</sup>. The court emphasized that transgender individuals

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<sup>86</sup> Lina Acca Mathew, “Sexual abuse through child marriages: The law in India” *Journal of Trauma & Treatment*, No. 5 (2017). <https://www.omicsonline.org/open-access/sexual-abuse-through-child-marriages--the-law-in-india-2167-1222-1000404-95914.html>. [accessed: 25.8.2024].

<sup>87</sup> Independent Thought vs. Union of India is 10 SCC 800, AIR 2017.

<sup>88</sup> Bhartiya Nayaya Sanhita, 2023 s.69.

<sup>89</sup> Ibidem.

<sup>90</sup> Bhupesh Thakur vs. State of H.P., SCC OnLine HP 4513, 2024.

<sup>91</sup> Supra (n 83).

<sup>92</sup> Ibidem.

have their own identities and should be protected under the Transgender Persons (Protection of Rights) Act, 2019.<sup>[93]</sup>

Additionally, the judge noted that the relationship happened before the transgender woman underwent surgery to transition. As a result, the court permitted Bhupesh Thakur to remain free while the case is ongoing.

## 6 | Child Sexual Abuse: The International Regime

### 6.1. The Convention on the Rights of the Child 1989

The UNCRC is the most comprehensive and detailed document on children's rights, often referred to as the "Magna Carta" for child protection rights. The Convention provides guidance on implementation measures in addition to specifying substantive rights. The CRC is also significant as it establishes, for the first time in binding international law from the child's perspective, the foundational principles for adoption. The convention on rights on children was signed by 197 countries including India. The CRC primarily focuses on the four aspects of rights of children. Therefore, "(the four p's): protection of children against discrimination and all forms of neglect and exploitation; participation by children in decisions affecting them; provision of assistance to children for their basic need."<sup>[94]</sup>

On 11 December 1992 India have signed and ratified the convention on rights of the child (UNCRC) India being a member of the Convention has incorporated its provision into domestic law<sup>[95]</sup> (United Nations, 2024).

The following outlines the provisions of the UNCRC alongside corresponding Indian laws aimed at protecting children.<sup>[96]</sup>

<sup>93</sup> Supra (n 76).

<sup>94</sup> Bistra Netkova, Mustafa Ariana Qosaj, "International legal standards in combating child online sexual abuse and exploitation" *Journal of Liberty and International Affairs*, No. 3 (2021): 111. <https://e-jlia.com/index.php/jlia/article/view/241>. [accessed: 26.8.2024].

<sup>95</sup> United Nations Treaty Collection. [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4). [accessed: 27.8.2024].

<sup>96</sup> UNCRC\_2020.Pdf. [https://nhrc.nic.in/sites/default/files/UNCRC\\_2020.pdf](https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf). [accessed: 27.8.2024].

- a. Article 1 of the UNCRC<sup>[97]</sup> (1989) defines a child “as any person under the age of 18”. This definition is echoed in various Indian domestic laws, highlighting the alignment between international standards and domestic legislation. For instance, Section 2(k) of the Juvenile Justice (Care and Protection Act)<sup>[98]</sup>, 2015 under Juvenile Justice (Care and Protection Amendment) Act 2000, adopts the UNCRC’s definition, asserting that “a child is any person who has not completed 18 years of age.” Similarly, the definition is reinforced in Section 2(3) of the BNS 2023<sup>[99]</sup> and Section 2(1)(d) of the POCSO<sup>[100]</sup> Act 2012, both of which also define “a child as someone below 18.”
- b. Article 2 of the UNCRC<sup>[101]</sup> asserts that all children are entitled to the same rights and must not face discrimination based on appearance, skin color, gender, language, religion, or opinions. Reflecting this principle, Article 15(3) of the Indian Constitution<sup>[102]</sup> mandates that the state shall make special provisions for children and women. In line with this commitment, India has enacted significant legislation aimed at protecting children’s rights, such as the POCSO Act, 2012, and the Juvenile Justice (Care and Protection) Act, 2015.
- c. Article 3(1) of the UNCRC<sup>[103]</sup> emphasizes that “the best interests of the child must be a primary consideration in all actions concerning children.” This principle is echoed in various Indian domestic laws, which aim to safeguard children’s welfare. The Hindu Minority and Guardianship Act<sup>[104]</sup>, 1956, reinforces this notion, particularly in Section 6 which dictates that the Father is a natural guardian of a minor and Section 13, which mandates that the welfare of a minor is paramount when appointing guardians. Additionally, Section 20 of the Hindu Adoption and Maintenance Act,<sup>[105]</sup> 1956, outlines obligations for parents to provide maintenance, thereby ensuring the well-being of legitimate and illegitimate children. The Juvenile Justice (Care and Protection of Children) Act, 2015, aligns with the UNCRC by

<sup>97</sup> Convention on the Rights of the Child 1989, a.1.

<sup>98</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s.2(k).

<sup>99</sup> Bhartiya Nayaya Sanhita, 2023 s.2(3).

<sup>100</sup> The Protection of Children from Sexual Offence Act, 2012 s.2(1)(d).

<sup>101</sup> Convention on the Rights of the Child 1989 a.2.

<sup>102</sup> M P Jain, Indian Constitutional Law, 1971 (9th edn, LexisNexis 2025) 581.

<sup>103</sup> Convention on the Rights of the Child 1989, a.3(1).

<sup>104</sup> The Hindu Minority And Guardianship Act, 1956 s.6.

<sup>105</sup> The Hindu Adoptions And Maintenance Act, 1956 s.20.

providing protective measures for children in conflict with the law and child in need of care and protection, ensuring their best interests are prioritized. The Juvenile Justice (Care and Protection of Children) Act,<sup>[106]</sup> 2015 addresses accountability, as seen in Section 75 of the act, which punishes cruelty towards children, reflecting a robust legal framework designed to uphold the rights and welfare of children in India. Gaps include inconsistencies in Sections 56, 57, 58, and 60 of the Juvenile Justice (Care and Protection of Children) Act<sup>[107]</sup> and HAMA,<sup>[108]</sup> 1956. Additionally, the lack of codification of personal laws on adoption, maintenance, and guardianship hinders uniform application and protection of children's rights as mandated by the UNCRC.

- d. The provisions of the UNCRC, particularly Articles 20, 21, and 25, find significant reflection in Indian domestic law through the Juvenile Justice (Care and Protection of Children) Act, 2015. Article 20 of UNCRC<sup>[109]</sup> emphasizes the right of children deprived of a family environment to receive special care that respects their ethnic, cultural, and linguistic backgrounds. This principle is echoed in Section 2(14) of Juvenile Justice (Care and Protection of Children) Act,<sup>[110]</sup> 2015, which defines children in need of care and protection, ensuring they receive appropriate support. Furthermore, Section 41<sup>[111]</sup> mandates the registration of Child Care Institutions (CCIs), while Section 42<sup>[112]</sup> imposes penalties for non-compliance, thereby ensuring accountability in care provision. Article 21 of UNCRC<sup>[113]</sup> highlights the importance of prioritizing the best interests of children in adoption and foster care arrangements, Article 25 of UNCRC<sup>[114]</sup> emphasizes that children in care for protection or treatment have the right to have their placement reviewed on a regular basis. Section 30 of the Juvenile Justice (Care and Protection of Children) Act<sup>[115]</sup> 2015, aligns with

<sup>106</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s.75.

<sup>107</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s. 56. Adoption, s. 58. Procedure for adoption by Indian prospective adoptive parents living in India, s. 60. Procedure for inter-country relative adoption.

<sup>108</sup> The Hindu Adoptions And Maintenance Act, 1956.

<sup>109</sup> Convention on the Rights of the Child 1989 a.20.

<sup>110</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s.2(14).

<sup>111</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, s.41.

<sup>112</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s.42.

<sup>113</sup> Convention on the Rights of the Child ,1989 a.21.

<sup>114</sup> Convention on the Rights of the Child ,1989 a.25.

<sup>115</sup> Juvenile Justice (Care and Protection of Children) Act,2015 s.30.

the concept provides that the committee shall Conduct at least two inspection visits per month to residential facilities for children in need of care and protection, along with recommending actions for improvement in service quality to the District Child Protection Unit and the State Government, A concept supported by Section 57 of the Juvenile Justice Act<sup>[116]</sup>, stipulates that prospective adoptive parents must be physically and mentally fit, requiring the consent of both spouses in the case of couples. Additionally, the Act provides guidelines for foster care and long-term care, ensuring children receive stable and supportive environments. Section 68<sup>[117]</sup> establishes the Central Adoption Resource Authority (CARA) to regulate adoption processes, reinforcing oversight in both in-country and inter-country adoptions. According to NCPCR data, approximately 1,300 CCIs remain unregistered, highlighting a lack of effective enforcement of legal requirements.

- e. Article 39 of the UNCRC<sup>[118]</sup> emphasizes the rehabilitation of child victims of neglect, abuse, or exploitation, ensuring they receive the necessary support to recover and reintegrate into society. In alignment with this principle, India has implemented several legal provisions aimed at protecting and rehabilitating such children. The POCSO Act<sup>[119]</sup> 2012 provides a framework for addressing and supporting child victims of sexual offenses, while the Juvenile Justice (Care and Protection of Children) Act 2015 outlines comprehensive measures for the rehabilitation and reintegration of children in conflict with the law or Child in need of care and protection. Furthermore, the Criminal Procedure Code (CrPC)<sup>[120]</sup> includes Sections 357A, 357B,<sup>[121]</sup> and 357C,<sup>[122]</sup> which establishes the Victim Compensation Scheme, ensuring financial support for victims, including children, to aid in their recovery. For the Medical Examination of a female victim provision of section 27 of the POCSO ACT<sup>[123]</sup> 2012 provides

<sup>116</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 s.57.

<sup>117</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 s.68.

<sup>118</sup> Convention on the Rights of the Child, 1989 a.39.

<sup>119</sup> The Protection of Children from Sexual Offences Act, 2015.

<sup>120</sup> Code of criminal Procedure, 1973 s.357A.

<sup>121</sup> Code of Criminal Procedure, 1973 s.357B.

<sup>122</sup> Code of Criminal Procedure, 1973 s.357C.

<sup>123</sup> Section 27: Medical Examination Of A Child | The Protection of Children from Sexual Offences Act, 2012 (n 38).



female doctor to do medical examination of female victim but the law is silent in case there is absence of female doctor.

- f. Article 34 of the UNCRC<sup>[124]</sup> (1989) “obliges states parties to protect children from all forms of sexual exploitation and abuse,” requiring comprehensive preventive measures. India has incorporated these principles into its domestic laws, notably through the Prohibition of Child Marriage Act,<sup>[125]</sup> 2006, which declares marriages involving the sale of children as null and void under Section 12(c). The POCSO Act, 2012, specifically addresses sexual offenses against children, including boys, girls, and those identifying as third gender. This Act includes crucial provisions such as Section 21<sup>[126]</sup>, which penalizes failure to report such offenses, and the establishment of Special Courts under Sections 28.<sup>[127]</sup>
- g. Articles 35, 36, 37, 39, and 40 of the UNCRC<sup>[128]</sup> establish essential protections for children against abduction, exploitation, torture, and promote their recovery and dignity. In alignment with these provisions, Indian law includes several relevant sections of the IPC,<sup>[129]</sup> 1860. For instance, Section 361 of IPC<sup>[130]</sup> 1860 addresses the kidnapping of children from lawful guardianship, while Section 363A of IPC<sup>[131]</sup> 1860 specifically criminalizes the kidnapping or maiming of minors for the purpose of creating more effective beggar. Sections 370 of IPC<sup>[132]</sup> and 370A of IPC<sup>[133]</sup> tackle the trafficking and exploitation of children, ensuring stringent measures against recruitment and transportation for illicit purposes. Furthermore, Sections 372 of IPC<sup>[134]</sup> and 373 of IPC<sup>[135]</sup> prohibit the sale and purchase of minors for prostitution, reinforcing India’s commitment to combating child exploitation. Section 376 of IPC<sup>[136]</sup> also protect minors from sexual

<sup>124</sup> Convention on the Rights of the Child ,1989 a.34.

<sup>125</sup> The Prohibition of Child Marriage Act, 2006 s.12(c).

<sup>126</sup> The Protection of Children from sexual offences Act ,2012 s. 21.

<sup>127</sup> The Protection of children from sexual offences, Act 2012 s.28.

<sup>128</sup> Convention on the Rights of the Child, 1989 s.35 s.36 s.37 s.38 s.39 s. 40.

<sup>129</sup> Indian Penal Code,1860.

<sup>130</sup> Indian Penal Code,1860 s.361.

<sup>131</sup> Indian Penal Code,1860 s. 363A.

<sup>132</sup> Indian Penal Code ,1860 370.

<sup>133</sup> Indian Penal Code, 1860 s.370A.

<sup>134</sup> Indian Penal Code,1860 s.372.

<sup>135</sup> Indian Penal Code,1860 s.373.

<sup>136</sup> Indian Penal Code,1860 s. 376 – Punishment for Rape (n 15).

offenses. Any child marriage resulting from kidnapping is declared null and void, reflecting a commitment to protecting minors from coercive practices. Additionally, the Juvenile Justice (Care and Protection of Children) Act, 2015, explicitly incorporates the standards set by the UNCRC in its preamble, establishing a comprehensive approach to handling both children in conflict with the law and those in need of care and protection. This Act not only emphasizes the rights of children but also outlines procedures for their rehabilitation and social reintegration, ensuring that their best interests are prioritized. Section 39 of the Juvenile Justice (Care and Protection) Act,<sup>[137]</sup> 2015 mandates individual care plans for rehabilitation; these are frequently not implemented. Additionally, while Section 15(1) of the Act<sup>[138]</sup> allows the Juvenile Justice Board to consult psychologists and social workers for assessing whether a child should be tried as an adult, practical challenges—such as the unavailability of trained professionals and lack of funding—result in inadequate use of these resources. Consequently, many children are unnecessarily subjected to adult trials, undermining the protective intent of the UNCRC.<sup>[139]</sup>

## 6.2. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)

On 15 November 2004, India signed the “Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography” and ratified 16 August 2005. However, the country has not yet submitted a report on its implementation. This protocol acknowledges the child’s right to “protection from economic exploitation and from engaging in any work that could be hazardous, interfere with education, or harm their health or overall development.”<sup>[140]</sup>

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<sup>137</sup> Section 39: Process of Rehabilitation and Social Re Integration | The Juvenile Justice (Care and Protection of Children) Act, 2015,’ (n 106).

<sup>138</sup> Juvenile Justice (Care and Protection) Act 2015 s.15(1).

<sup>139</sup> Convention on the Rights of the Child ,1989.

<sup>140</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’ (OHCHR). <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>. [accessed: 30.8.2024].

Article 2 of the UNCRC<sup>[141]</sup> (1989) mandates “non-discrimination in the protection of children’s rights,” irrespective of various statuses such as race, religion, or disability. This principle is mirrored in the Indian Constitution, which enshrines “the right to equality under Article 14<sup>[142]</sup> and prohibits discrimination based on religion, race, caste, and sex under Article 15.<sup>[143]</sup>” Additionally, Article 17<sup>[144]</sup> abolishes untouchability, and Article 21<sup>[145]</sup> ensures that no person is deprived of life or liberty without due process. Articles 25<sup>[146]</sup>, 29(1)<sup>[147]</sup>, and 30<sup>[148]</sup> further safeguard the rights of individuals to practice their religion freely and secure access to educational institutions, emphasizing the protection of minority rights.

A significant gap between the UNCRC and Indian laws is the absence of ‘enabling legislation to prohibit discrimination in the private and unorganized sectors’ based on religion, sex, ethnicity, and language. While the Constitution provides protection against discrimination in the public sphere, the lack of specific laws addressing these issues in private employment and informal sectors undermines the UNCRC’s commitment to ensuring “equal rights and protection for all children, regardless of their background.”

### 6.3. The International Covenant on Civil and Political Rights 1966

The United Nations General Assembly adopted this Covenant on 16 December 1966, and it came into effect on 23 March 1976. As of May 2012, 167 states had ratified the Covenant, with India joining as a state party in 1979.<sup>[149]</sup>

The Human Rights Committee, consisting of 18 independent experts acting in their personal capacity, oversees the implementation of the ICCPR. The Committee reviews report from all countries through periodic assessments, providing observations and recommendations. India

<sup>141</sup> Supra (n.92).

<sup>142</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 570.

<sup>143</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 581.

<sup>144</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 590.

<sup>145</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 600.

<sup>146</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 615.

<sup>147</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 625.

<sup>148</sup> M P Jain, *Indian Constitutional Law*, 1971 (9th edn, LexisNexis 2025) 635.

<sup>149</sup> *Explainer International Covenant on Civil and Political Rights (ICCPR)*. <https://www.manoramayearbook.in/india/special-articles/2024/07/19/iccpr-upsc.html>. [accessed: 1.9.2024].

has undergone three reviews of its ICCPR implementation, with the most recent occurring in 1997.<sup>[150]</sup>

- a. Article 1<sup>[151]</sup> of the Covenant commits states to uphold and promote the right to self-determination, while also acknowledging the rights of peoples to freely own, trade, and manage their natural wealth and resources.
- b. The following outlines the provisions of the UNCRC alongside corresponding Indian laws aimed at protecting children.
- c. Article 6 of the ICCPR<sup>[152]</sup> is substantially in line with India's Article 21<sup>[153]</sup> of the Constitution, which guarantees the right to life and personal liberty and ensures that no one is deprived of life unless a procedure established by law is followed. The ICCPR's commitment to the protection of life through judicial scrutiny is mirrored in India's legal system, even though both provisions stress that the deprivation of life must be in line with legal procedure and not arbitrary. In accordance with the ICCPR, Indian courts have created strict procedure safeguards and broadened the definition of the right to life to include not only survival but also dignity. In accordance with the standards of the ICCPR, India's position on the death penalty limits its use to the "rarest of rare" circumstances, guaranteeing that it upholds the values of justice, equity, and due process. Therefore, in accordance with the international norms established by the ICCPR, India's constitutional guarantee under Article 21 implies a deeper commitment to the right to life.
- d. India's Article 23<sup>[154]</sup> of the Constitution prohibits human trafficking and forced labor, aligning with Article 8<sup>[155]</sup> of the ICCPR, which guarantees freedom from slavery. Both provisions emphasize the absolute ban on slavery, ensuring individuals cannot be subjected

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<sup>150</sup> Ibidem.

<sup>151</sup> "International Covenant on Civil and Political Rights" (OHCHR). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. [accessed: 2.9.2024].

<sup>152</sup> Ibidem.

<sup>153</sup> Supra note (140).

<sup>154</sup> M P Jain, Indian Constitutional Law ,1971 (9th ed., LexisNexis 2025) 620.

<sup>155</sup> Supra note (146).

- to forced labor. Article 23<sup>[156]</sup> also criminalizes human trafficking, reflecting the ICCPR's commitment to personal freedom and dignity.
- e. Juvenile Justice (Care and Protection of Children) Act, 2015 aligns with Article 24<sup>[157]</sup> of the ICCPR, focusing on children's rights, especially regarding their identity, nationality, and registration. Both provisions aim to protect children's welfare and rights. The Juvenile Justice Act offers a framework for caring and rehabilitating children in difficult situations, emphasizing identity, protection, and dignity, supporting a child-centered approach for their development and safety.
  - f. Article 14<sup>[158]</sup> of the Constitution guarantees equality before the law and equal protection of law, aligned with the Article 26<sup>[159]</sup> of the ICCPR, which also prohibits discrimination. Both articles emphasize that no one should be discriminated against based on race, sex, or religion, ensuring equal rights and legal protection for all, promoting fairness and human dignity.

## 7 | Conclusion

CSA is a grave offence as it negatively impacts a child's overall development. Thus, the POCSO Act is a welcomed development and the act has made reporting of cases mandatory. It has undoubtedly played a crucial role in addressing and combating the issue of CSA in India. The Act is comprehensive and has some unique features. However, certain factors continue to hinder the delivery of justice for CSA victims. The legislation aims to be gender-neutral, acknowledging that boys, like girls, are also the victims of CSA. However, many cases involving boys go unreported, despite the reality that they are also subjected to sexual assault. While the POCSO Act offers protection for both genders, there is a significant gap in the implementation of these laws and procedures. Additionally, Section 69

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<sup>156</sup> Ibidem.

<sup>157</sup> Supra note (146).

<sup>158</sup> Supra note (137).

<sup>159</sup> Supra note (146).

of the BNS 2023 only provides protection for women against rape, leaving male victims without similar legal safeguards.

A substantial number of the POCSO cases involve individuals aged 15 to 18, where both parties engage in consensual sexual relationships. These cases often result in convictions, acquittals, or prolonged court proceedings, indicating a pressing need to establish clear age of consent laws in India. This would help to reduce the number of cases clogging the court system, which is already burdened by disputes arising from consensual relationships.

Moreover, the legal framework is inconsistent; for instance, a married girl aged 15 to 18 is deemed to have consented to sexual relations with her husband, even if her consent is not genuine. Conversely, any sexual interaction – regardless of consent – between an unmarried girl in the same age group is classified as statutory rape. The POCSO Act of 2012 and the BNS 2023 stipulate that female victims should undergo medical examinations by female doctors. However, in situations where a female doctor is unavailable, male doctors often conduct these examinations. Existing legislation are salient on this issue when the laws is open for amendments.

India's commitment to the international instruments like the UNCRC, the Optional Protocol and the ICCPR reflects its dedication to safeguarding children's rights by embedding international standards into domestic legislation. The Juvenile Justice (Care and Protection of Children) Act of 2015, the POCSO Act of 2012, and constitutional provisions, align closely with The UNCRC principles, ensuring children are protected from exploitation, discrimination, and harm. India's child protection framework has notable gaps, including inconsistencies in the Juvenile Justice and Hindu Adoption and Maintenance Acts, weak enforcement of protective measures, and the lack of anti-discrimination laws for children in the private sectors. Effective child welfare requires harmonizing legislative conflicts, enforcing Child Care Institution (CCI) registration, and providing resources for the Juvenile Justice Board. Strengthening mental health services, funding victim support programs, and implementing anti-discrimination laws in private and unorganized sectors are critical to aligning India's framework with UNCRC goals and safeguarding children's best interests.

All those responsible for child protection must address issues effectively. Instilling strong values and ethics in children from an early age, involving families, schools, and communities, is important. The resilience of children should inspire adults to take responsible actions, creating an environment that minimizes future risks for their growth and well-being. Public

awareness programs can help foster a society focused on children's rights, well-being, and safety, ensuring every child grows up valued and protected.

## Bibliography

- B&B Associates LLP., *Comparison of Bharatiya Nyaya Sanhita, (BNS) 2023 and Indian Penal Code, (IPC) 1860*, 2024. <https://bnblegal.com/article/comparison-of-bharatiya-nyaya-sanhita-bns-2023-and-indian-penal-code-ipc-1860/>.
- Belur Jyoti, Brijesh Bahadur Singh, "Child sexual abuse and the law in India: a commentary" *Crime Science*, 4 (2015).
- Dabir Neela, Mohua Nigudkar, "Child abuse: Confronting reality" *Economic and Political Weekly*, 42(2007): 2863.
- Dr. Devakumar Jacob., "Decoding rape laws: Gender neutrality in rape: A transnational perspective" *East African Scholars Journal of Education, Humanities and Literature*, nr 1 (2021): 23-27
- Gaur Krishna Deo, *Indian Penal Code*, 8<sup>th</sup> ed. Gurugram: Lexis Nexis India, 2023.
- Halder Debarati, *Child Sexual Abuse and Protection Laws in India*. New Dehli: SAGE Publications India, 2018.
- Harbishettar Vijaykuma, Suresh Bada Math, "Violence against women in India: comprehensive care for survivors" *Indian Journal of Medical Research*, 2 (2014): 157-159.
- Mathew Lina Acca, "Sexual abuse through child marriages: The law in India" *Journal of Trauma & Treatment*, No. 5 (2017): 2-2
- McCoy Monica L., Stefanie M. Keen, *Child abuse and neglect*. London: Routledge, 2022.
- Mishra Jigyasa, *Raped, mocked by police for seeking justice: India's rape laws do not cover transwomen*, 2022. <https://article-14.com/post/raped-mocked-by-police-for-seeking-justice-india-s-rape-laws-do-not-cover-transwomen--62c65919a04a3>
- Moirangthem Sydney, Naveen C Kumar, Suresh Bada Math, "Child Sexual Abuse: Issues & Concerns" *Indian Journal of Medical Research*, 1 (2015): 1-3.
- Naik Yeshwant, "The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code" *Social Science Research Network*, 3 July 2024.
- Netkova Bistra, Mustafa Ariana Qosaj, "International legal standards in combating child online sexual abuse and exploitation" *Journal of Liberty and International Affairs*, No. 3 (2021): 111-122.



- Rajeev Seth, R.N. Srivastava, "Child sexual abuse: Management and prevention, and protection of children from sexual offences (POCSO) Act" *Indian Pediatrics*, 54 (2017): 1003–1007.
- Seigfried-Spellar Kathryn C., Virginia Soldino, "Child sexual exploitation: Introduction to a global problem," [in:] *The palgrave handbook of international cyber-crime and cyberdeviance*, ed. Thomas J. Holt, Adam M. Bossler. 1203–1223. London: Palgrave, 2020.
- Shavala Bhargavi., *The protection of children from sexual offences, 2012: An overview*, 2024. <https://cdnbbsr.s3waas.gov.in/s3ec03333cb763facc6ce398ff83845f22/uploads/2024/09/2024091190.pdf>.
- Skoczylas, Dominika. "Administrative and Criminal Law Aspects of the Protection of Minors in Cyberspace: Selected Issues". *Prawo i Więż*, no. 5 (2024): 657–675. <https://doi.org/10.36128/PRIW.VI52.607>.

