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POCSO ACT

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Safety and security don't just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear."

- Nelson Mandela

¹Child rights, akin to human rights, stem from the belief that every individual possesses inherent and immutable rights from birth, irrespective of gender, age, religion, race, ethnicity, or other factors. It is acknowledged that children require special protection to ensure their unfettered, wholesome development devoid of exploitation or harm.

The responsibility for safeguarding children rests with a multitude of actors including parents, schools, communities, law enforcement, judiciary, healthcare professionals, voluntary organizations, child welfare groups, district child protection units, and other entities. Together, they must create an environment conducive to shielding children from harm and facilitating a childhood free from fear.

Globally, incidents of child sexual abuse are escalating, with India ranking among the top five countries grappling with soaring rates of juvenile delinquency. However, the existing criminal legislation in India falls short in addressing this critical issue comprehensively. The Law Commission, in its 172nd Commission Report, conducted a review post the **Sakshi v. U.O.I.** case, focusing on laws pertaining to sexual offenses. It recommended numerous amendments to address the matter effectively.

Subsequently, the Indian Penal Code underwent several revisions through the 2013 Criminal Law Amendment Bill, following the Nirbhaya case.

India is home to 430 million children, constituting one-fifth of the global population under 18 years old. These children encounter significant challenges from an early age, including malnutrition, illiteracy, abduction, forced labour, substance abuse, sexual exploitation, and pornography. Of particular concern is the issue of child sexual abuse, which often inflicts physical or psychological harm upon the unsuspecting and hopeful child.

Child sexual abuse typically involves exploiting a child for sexual arousal or gratification, often through coercive means. According to a national study by the Ministry of Women and Child Development, sexual abuse encompasses acts such as touching a child's private parts or exposing them to indecent activities, including

¹ Women and crime law

capturing nude photographs. However, the gravity of the situation remains underreported, with many cases going unacknowledged.

Child Sexual Abuse in India

Underreporting persists due to the societal stigma attached to these cases. Following the 2012 Delhi gang rape incident, a UNICEF study revealed alarming trends, with one child being victimized in three rape cases, indicating a distressing escalation.

Approximately 7,200 children, including infants, fall victim to rape annually, a deeply troubling statistic.

²Prior to 2012, the Indian Penal Code (IPC) addressed individual sexual offenses against children through three sections: Rape (Section 376), outraging modesty (Section 354), and unnatural acts, including anal sex and homosexuality (Section 377). Consequently, acts of aggressive sexual abuse, harassment, and exploitation were not explicitly criminalized and thus often went unreported. The increased attention to child protection issues in the media and public discourse may be attributed to the enactment of the Protection of Children from Sexual Offenses (POCSO) Act by the Indian government. This legislation encompasses child sexual abuse, harassment, and obscenity involving individuals under 18 years old, mandating special courts for expediting investigations into these crimes.

Table 1: NCRB Data on Child Rape Cases

Year	All India
2001	2113

² Ncrb data and child sexual report

2005	4026
2010	5484
2012	8541
2013	12,363
2017	12,903
2018	14176
2019	14818

Established in 2007 as an autonomous body, the National Commission for the Protection of Child Rights ensures compliance with child rights specified in the Constitution of India and the United Nations Convention through various laws, policies, and programs. Additionally, a commission has been appointed to oversee the implementation of the POCSO Act.

The universal acknowledgment of the importance of safeguarding the freedom, protection, and dignity of children underscores the necessity for laws combating child sexual abuse. Protecting the rights of all children is imperative for the holistic development and

future prosperity of any nation. Fundamental rights such as access to food, life, health, education, and dignity are paramount. Recognizing the profound and enduring psychological effects of child sexual abuse, including diminished confidence and lifelong trauma, underscores the urgency of robust legal measures for safeguarding children.

Constitution of India

The Constitution of India prioritizes the status and welfare of children, demonstrating the conscientious efforts of its framers to safeguard their rights. This commitment is evident in several provisions of the Constitution. Article 15, established to counteract discrimination, notably underscores the protection of children. Provisions such as Article 14, 15, 15(3), 19(1), 21, 21(A), 23, 24, and 39, pertaining to principles of equality, the right to life, personal liberty, and protection against exploitation, further reinforce the framework for safeguarding children's rights.

Principles of Child Centric Policies and Laws:-

The establishment of the National Commission for Protection of Child Rights aimed to develop and implement policies geared towards safeguarding children's rights and meeting their fundamental needs. Key principles underscored in child policies prioritize

decentralization, flexibility, and the institutional framework, ensuring comprehensive coverage and service provision tailored to children's requirements. This involves empowering Gram Panchayats for effective implementation. Institutional frameworks have been established at various levels, including state, district, block, and village levels, to safeguard children's rights to health, nutrition, education, and freedom. Additionally, efforts to streamline the process of delivering justice to children have been initiated, including the development of specialized legal codes at the state level, the training of personnel on child rights and their inherent dignity, privacy, and security.

National Policies and Legislations Addressing Child Rights

The ³Indian Constitution's Fundamental Rights and Directive Principles form the basis for child rights, guiding the formulation of policies and legislation at the national level. These measures address various aspects concerning children, including protection against child trafficking, child marriage, child labour, access to education, and sexual offenses. Numerous constitutional provisions and national policies have been established to uphold the commitment to child rights.

In alignment with the country's child protection strategies, India has enacted legislation specifically targeting child sexual abuse. The Child Protection Bill, passed by Parliament on 22 May 2011, addresses issues related to child sexual abuse.

Government regulations under this Act were announced in November 2012, with the law poised for implementation. Prior to the enactment of the Protection of Children Offenses (POCSO) Act, most sexual offenses fell under the Indian Penal Code (IPC) However, this law did not comprehensively address all forms of sexual offenses against children and treated victims uniformly regardless of age.

Child sexual abuse can now be prosecuted under specific sections of the Indian Penal Code, including Section 375 (Rape), Section 354 (Outraging the modesty of a woman), and Section 377 (Unnatural offenses). Additionally, state-wise data reveals

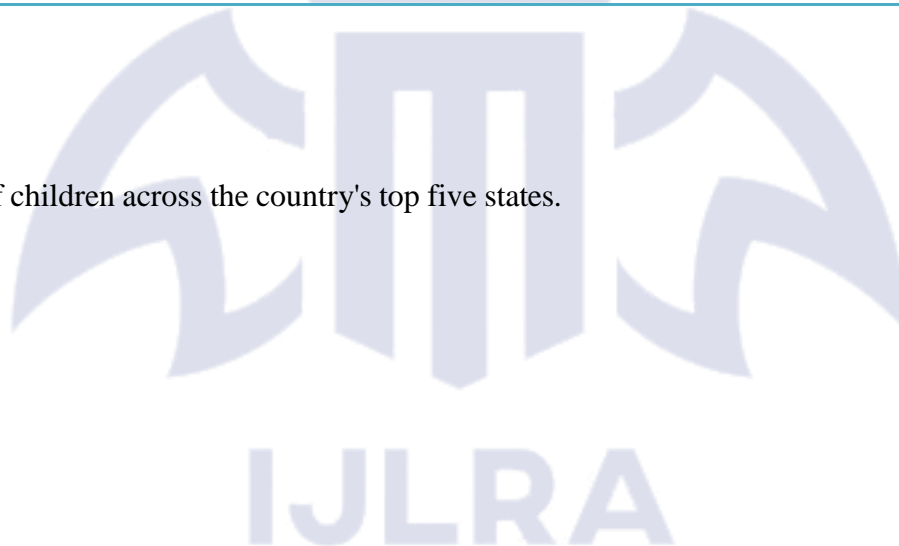
³ Child Rights and fundamental status

trends
sexual
and
to the

State	Number of cases 2019	Rate
Uttar Pradesh	2652	3
Maharashtra	2370	6.3
Madhya Pradesh	2106	6.8
Delhi UT	766	13.7

in
assault
insults

modesty of children across the country's top five states.



Kerala	517	5.5
India	12226	2.7

POCSO Act 2012:

The new Act introduces various offenses for which individuals can be prosecuted, defining a child as anyone under the age of 18 based on biological age without consideration for mental age issues. A case filed in the Supreme Court highlights this concern, involving a woman of biological age 40 but mental age 6 who was allegedly raped. The victim's advocate argues that failure to assess mental age undermines the statute's entire objective. The Supreme Court has postponed its decision on whether the ⁴2012 law encompasses mental age in its definition or solely relies on biological age.

In addition to peon-vaginal penetration, the 2012 Act recognizes other forms of infiltration and criminalizes immoral conduct against children. Regarding pornography, the law also prohibits the viewing or possession of child pornography and criminalizes the promotion of sexual exploitation of children. Furthermore, it introduces practical improvements to simplify the challenging process of child trials in India. However, criticism has been directed at the law for criminalizing homosexual acts between individuals under 18, unlike the 2001 bill, which did not penalize such acts if one or both partners were over 16.

The 2012 Act also addresses the prevention of re-abuse of children by the judiciary, advocating for on-camera hearings in special courts and child-friendly identification procedures to prevent disclosure. During proceedings, a child's parent or another

⁴ Posco Act – 2012

involvement of translators, special educators, or other experts is facilitated. Moreover, the legislation mandates that cases of child sexual abuse must be resolved within one year of being filed, ensuring swift resolution.

Under this law, all children under 18 are protected from sexual abuse, harassment, and obscenity, with the severity of punishment determined by the gravity of the offense, ranging from simple measures to more severe penalties.



State	Number of cases	Rate
Assam	1519	12.8
West Bengal	706	2.4
Rajasthan	60	0.2
Haryana	56	0.6
Telangana	32	0.3
India	2488	7

Punishments for offences covered in the Act are :

"Penetrative Sexual Assault (Section 3) - Not less than seven years which may extend to imprisonment for life, and fine (Section 4)"

"Aggravated Penetrative Sexual Assault (Section 5) - Not less than ten years which may extend to imprisonment for life, and fine (Section 6)"

"Sexual Assault (Section 7) - Not less than three years which may extend to five years, and fine (Section 8)"

"Aggravated Sexual Assault (Section 9) - Not less than five years which may extend to seven years, and fine (Section 10)"

"Sexual Harassment of the Child (Section 11) - Three years and fine (Section 12)"

"Use of Child for Pornographic Purposes (Section 13) - Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))."

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State	Number of cases	Rate
⁵ Uttar Pradesh	4954	5.6
Maharashtra	4815	12.7
Madhya Pradesh	4717	15.7
West Bengal	2132	7.3
Odisha	1928	13.7
India	36022	8.1

Child Protection and National Human Rights Commission

The National Human Rights Commission (NHRC) stands as a beacon of India's commitment to advancing and safeguarding human rights. It exhibits particular concern regarding juvenile offenders and vulnerable children in need of care and protection. The NHRC's legal department addresses complaints, while its policy studies, programs, and projects oversee the implementation of relevant laws nationally and advocate for the effective integration of international standards to bolster the functioning of the juvenile justice system.

Child Protection:

As per the 2011 census, India's population under the age of eighteen exceeded 440 million, constituting 37 percent of the total populace. Among them, children aged 0–6 make up 14 percent, those aged 7–14 account for 17 percent, and those aged 15–17

⁵ Human Rights commission and Juvenal justice

constitute 6% . The majority of India's population is vulnerable and reliant on others. Hence, a comprehensive approach, involving children as partners in national development, is⁶ imperative. Safeguarding children from violence, abuse, malnutrition, and ensuring their holistic development is crucial, as the nation's future security hinges on protecting their rights. According to the Ministry of Women and Child Development (MWCD), 170 million children, or 40% of the population, face adversity in India. They endure malnutrition and exploitation, often living on the streets or pavements. Efforts are underway to secure children's rights to food, life, and liberty through initiatives like the Integrated Child Development Services (ICDS). A MWCD study from 2007 reveals that 53 percent of children have experienced sexual abuse, underscoring the challenge of child protection. Additionally, India's 2011 census highlights a sex ratio of 914 for children aged 0–6, indicating ongoing gender-based discrimination, with many girls being killed before or after birth.

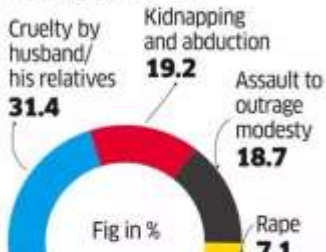
The prevalence of child brides in India stands at approximately 24 million, representing 40 percent of global child marriages. Child marriage subjects' girls to early pregnancies, often resulting in maternal mortality. It infringes upon girls' rights to education and health and constitutes a form of sexual abuse.

6 Ministry of affair and child development

Plain Speak

Registered cases of crime against women have risen. Here's a snapshot:

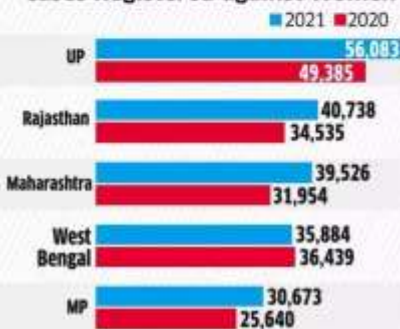
Nature of Crimes



States/UTs with Crime Rates Above National Average

State/UT	Crime Rate
National average:	66.4
Delhi	144.4
Haryana	118.7
Telangana	117
Rajasthan	115.1
Odisha	103
Andhra Pradesh	96.2
Andaman and Nicobar	93.7
Kerala	82
Assam	81
Madhya Pradesh	78.8
Uttarakhand	77
Maharashtra	75.1
West Bengal	71.8

Cases Registered against Women



Source NCRB data



Child Pornography

⁷Sexuality is a divisive phenomenon in Indian society and is often associated with values. Child pornography is a subcategory of pornography in which images of children and sexually explicit sounds are depicted for the purpose of arousing sexual desire in a person or viewer. Such departments regularly release violent videos and feature children and teenagers suffering from watching these kids record the best parts of the video. After such an industry, take photos of the child naked and take photos of the child doing sexual activity and earn money from those crying photos of the child by selling these photos on the site. Today, thanks to the advancement of technology and the widespread use of smartphones, we can easily find all these types of videos on the internet and in the market. At some point the child needs to be forced into these types of activities for many reasons. In this article the researcher tries to find legal reasons and laws regarding child pornography in India. ⁸The researcher also discusses judicial testimony and the legal response to child pornography.

Today, child pornography is considered a serious crime by many organizations. With the advancement of technology, the problem of child abuse is becoming more serious and harmful than ever. The consequences for child victims are serious, and many will suffer in different ways for years to come. It is common for children who are abused and depicted in pornography to experience trauma and guilt. Additionally, pornography-related crimes are directly related to sexual violence against children.

Although some pornography depicts the sexual abuse of children, recording, sharing and viewing such abuse increases the number of victims of child abuse. The trauma is compounded by the knowledge that the abuse was recorded, validated, and praised by others. The problem of child abuse is included in Article of the United Nations Convention on the Rights of the Child (CRC) as child abuse and children's rights. Subject to the provisions of this Convention, all Parties to this Convention shall combat sexual violence against children and the exploitation of all children. Sweden ratified the convention and agreed to take measures to eliminate

⁷ Nlu journal

⁸ Chat Gpt for re-arrangement of lines

gender-based violence against children. But it is not clear exactly how this should be done, and there are many factors that influence each country's decision on how to solve this problem. Since possession of child pornography is not explicitly punishable, countries can choose whether to criminalize possession.⁹ According to the

National Capacity Assessment Report, 90% of men and 80% of women interviewed state that they have had an experience (pornographic video) at some point in their lives. .

Nearly 30% of men and 17% of women said they first¹⁰ experienced it at a young age. Just as there is no literature on the psychological effects of child pornography, there is also no literature on the effects of exposure to harmful substances such as pornography. Although promiscuity often has negative connotations, some authors have explored its possible consequences. For example, in the catharsis hypothesis, society is willing to 'sacrifice' a few children and 'use' them for the benefit of the many; He said that commercial pornography has no real effect on childless children, but instead has a positive and constructive effect by putting them in a normal state of mind.

Kutchinsky's research on the effects of pornography in Denmark showed this, as well as the increase in pornography. Police said there was a significant decrease in sexual activity, including child abuse. But Kutchinsky also notes that "participation in child sexual abuse is not a desirable goal for many child molesters, but rather becomes a common but unattainable catalyst for sex."

Methodology

The methodology is didactic in nature. The researcher used both primary and secondary data sources. In this research, laws, court notifications and various articles and literature regarding child abuse were used. The nature of child pornography

⁹ Indian Convention and acts

¹⁰ Child commission and welfare report

The crime of child abuse is not a single crime, but a series of crimes with serious consequences. It probably starts with child abuse who doesn't understand what's happening to them, and even if they do, it doesn't do much good. This violence is then recorded and distributed to some terrible people, who are more than happy to see these kids suffer from using it and causing them to do it themselves. They even manage to do this, there is so much crime.

A child is a person who is just at the beginning of his life and has many years ahead of him, but if he becomes a victim of a ¹¹crime such as child sexuality, it becomes very difficult for that child to live normally. Such things will leave a mark on the mind of such a child. The expansion of the Internet and modern digital technology has coincided with the explosion of the child pornography market. Child pornography is easily accessible through almost any Internet technology, including social media, file-sharing sites, photo-sharing sites, gaming devices, and mobile applications. In addition to selling, sharing, and trading videos, perpetrators of child pornography may connect online and offline to share their interests, desires, and experiences with child exploitation.

What is Child Pornography?

¹²It is a representation, in the form of audio, video, or written text, of a child engaging in or having participated in a real or simulated sexual activity in a variety of forms, including electronic, digital, and optical. This also includes the use of minors for sexual purposes. This may also be where images featured were shot, edited or modified for display that a minor engaged in sexual activity. There is nothing but child abuse and exploitation of children engaging in activities that endanger their health and harm their health and mental health.

11 <https://unesdoc.unesco.org/ark:/48223/pf0000114743>

12 <https://www.justice.gov/psc/project-safe-childhood-fact-sheet>

[1] The UN Convention on the Rights of the Child defines child pornography as any representation of a child engaging in real or simulated sexual acts or sexual representations for primarily sexual purposes.

[2] The video¹³ contains images of a child, as stated in the definition of pedophile. A pedophile is usually a man (and in some cases a woman) who imposes his sexual desires on a child

[3]. Pedophilia consists of words used to describe sexual desire, which mostly includes an obsession with having sex with children. Such situations are a complete rejection of the healthy sexuality that exists between adults. [4] According to Article 9 of the 2001 Cybercrime Convention, child pornography is defined as “pornographic material that clearly depicts a minor engaging in sexual activity and a minor engaging in sexual activity.”

“Children are very sensitive and weak-minded, and it is difficult for them to return to the bad things of the modern technological age. Social media is an interesting site where children often fall into traps or meet people seeking children for sexual pleasure. This makes it easier for pedophile(s) to target and brainwash innocent children, leading to serious crimes such as child pornography and child trafficking.

Legal Aspect & Judicial provision

Protection of Children from Sexual Offenses (POCSO) Act, 2012 This Act has been enacted to protect children from sexual harassment, gender-based violence and scandalous crimes and also provide strong laws to protect the interests of the child at every stage of his life. court. In the preparation of this law, it is aimed to prioritize an easy-to-use system for providing information about children, recording evidence, conducting investigations and deciding¹⁴ criminal cases through special courts

. The new law requires more crimes for suspects to be punished. It recognizes forms of penetration other than artificial insemination and punishes acts of child prostitution.

¹³ University of Edinburg research journal

¹⁴https://www.google.co.in/url?sa=t&source=web&crct=j&copi=89978449&curl=https://www.ovc.ojp.gov/taxonomy/term/child-pornography&ved=2ahUKEwiAjJfudtKFAXWy-jgGHWeCD5g4ChAWegQIAxABCusg=AOvVaw3JsEcnlK7yXZb_ZB-r3fMv

Sexual violence: inserting the penis/object/any part of the body into the child's penis/urethra/anus/mouth or asking the child to do this to himself or another man. Sexual abuse: ¹⁵When someone touches a child or causes a child to touch themselves or another person, sexual abuse: making sexual comments, giving sexual signals/noises, frequent supervision, flashing, etc.

The Indian ¹⁶Parliament made amendments to the Protection of Children from Sexual Offenses Act, 2012 in August 2019. The new bill aims to improve the punishment of minors for sexual crimes, including the death penalty. In order to combat child pornography, the bill stipulates that those who use children for sex will be punished with five years' imprisonment and a fine. However, for second or subsequent offenses, the penalty will increase to seven years and a fine.

House Bill

defines child pornography as any depiction of sexually explicit conduct involving a child, including photographs, videos, images, or computer-generated images that cannot be identified with a child.

Information Technology Act, 2000 The Information Technology Act, 2000 makes it illegal to publish or transmit obscene material by electronic means. The original law did not contain specific provisions regarding child pornography; all pornography cases were handled under Article 67 of the previous law. However, it is important to note that the IT Act 2000 was an important step from the first commandment. All forms of pornography, both online and offline, are punishable under the Indian Penal Code, 1860 and the Representation of Women (Prohibition) Act, 1986. Publishing or broadcasting obscene materials is punishable by imprisonment from two to five years. A maximum of five Lakh rupees and on conviction may be punished with imprisonment for five years and a fine of up to ten thousand rupees. Later amendments to Law No. of 2000, made in 2008, specifically penalize pornography. It is a crime to publish or transmit material depicting children in sexual activity. It is also prohibited to seek, collect, distribute and process sexual material featuring children.

¹⁵ Indian Express.com

¹⁶ Indian women C child welfare.com

Engaging in online relationships with children, facilitating online child abuse, and electronically recording child sexual abuse are criminal offenses. This law provides for years of imprisonment and a fine not exceeding five thousand rupees; The second offense is punishable by seven years' imprisonment and a fine not exceeding ten thousand rupees. ¹⁷A violation under this law is illegal and cognizable. Article 67C sets out the rules regarding data sharing and storage. An amendment was also made to Article 79; It indicates the situation even if liability is not involved in mediation. Even after clear laws against child pornography are in place, reducing child pornography is a difficult task. Modern technology is not advanced enough to remove child pornography from such a large area. Because the issue of pornography needs to be seen in the context of the right to freedom of expression and the duty to differentiate in digital media. ¹⁸Although the law has been made based on various laws, the main problem in its implementation is a serious problem because in the real world the implementation of may be possible due to the strong approach of the government, but when it comes to Technology, the government seems to be doing it. they are less concerned and say, 'These institutions are not even well-funded, so a serious approach is needed to solve the problem.

Although the law has been enacted, its implementation is viewed with suspicion. For example, Section 15 of the POCSO Act, 2012, which regulates the preservation of child pornography for commercial purposes, has not been registered in the Supreme Court or Supreme Court so far. In other words, managers who deal with the application or problem appear to be ineffective in practice. Due to the abundance of evidence in these cases, the judiciary tried to solve the problem of showing child pornography in 1 when the problem of showing child pornography was clearly seen, but the real problem is solving the problem related to it. Most of the time people tend

¹⁷ Ipc

¹⁸ Posco and women welfare act

to avoid the problem. There are very few cases dealing with this issue at the High Court and Supreme Court level. Some of these are discussed below:

A.P. In the **State vs. Mangali Yadagiri** case, it was before the Hyderabad High Court in which a 14-year-old SC/ST girl was raped by some persons and subsequently arrested. He was even threatened that if he was exposed, the perpetrators would make it public, so he was not allowed to file a complaint for a while. Here, the Supreme Court was asked whether the case would be tried in a special POCSO court or SC/ST court; here the court ordered that the case be tried in a special POCSO court P. **Shanmugavel Raj v. State and Ors.** This was a retrial of a criminal case seeking a continuation of the rape of a 13-year-old girl. Here the matter was pending in the sessions court, but since the law provides for the appointment of a special court for the matter, the Madras High Court decided to hold the hearing in this court. The special prosecutor's question was also directed to the court that approved the previous decision.

Hector FirdausKothavala v. State of Maharashtra concerned anticipatory bail for an offense related to the functioning of POCSO. Here, the father of two children was raising them under very difficult conditions. The children, ages 4 and 6, didn't quite understand what he wasn't saying, but his wife saw the wrongdoing and a lawsuit was filed. The suspect was released on bail determined by the court.

In the case of **Shashi and Ors. v. In the State of Karnataka**, there was news that some friends of the victim's father came to their house and asked the victim to collect firewood in the Forest, where the perpetrators forcibly raped her and also made videos of the betrayal. They were charged under the POSCO and IT Acts and a case was registered, but the Karnataka High Court granted them bail and the final verdict is still pending.

Ishan v. State of M.P. The truth is that the victim went to her friend's house and there her friend's brother raped her and filmed her. His family said they objected to him.

Since the perpetrator was a minor, the case went to JJB and then M.P. A petition for review was submitted to the Supreme Court. Here the suspect was released on parole.