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OFFENCES AGAINST CHILDREN – CRIMINAL JUSTICE AND SOCIAL ISSUES IN INDIA

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ABSTRACT

Children are the most vulnerable members of the society and their safety, protection and care from abuse, neglect, exploitation and harm is an undeniable duty of the State. The past two decades have seen a remarkable transformation in the development of the criminal justice system in India with respect to offences against children, but the disconnect between the law and society remains alarming. This assignment explores the main types of offences against children in India - child sexual abuse, trafficking, child labour and child marriage - from the perspectives of both criminal law and social justice.

*The study is anchored in the constitutional framework provided by Articles 15(3), 21, 21A, 24 and 39(f) of the Constitution of India 1950, and goes on to assess the substantive and procedural aspects of the Protection of Children from Sexual Offences Act 2012, the Juvenile Justice (Care and Protection of Children) Act 2015, the Indian Penal Code 1860, and the Bharatiya Nyaya Sanhita 2023. The analysis also delves into key judicial decisions - such as *Independent Thought v Union of India*, *Attorney General for India v Satish and Nipun Saxena v Union of India* - for their role in shaping child-protective jurisprudence in the country.*

The assignment also examines the social factors contributing to child vulnerability, such as poverty and caste and gender discrimination, and emerging trends in online child sexual abuse. It exposes crucial deficiencies in the operation of Special Courts, Child Welfare Committees, forensic mechanisms and rehabilitation services; and raises issues relating to the phenomenon of secondary victimisation in the criminal justice system.

The assignment ends with a reform agenda that proposes a unified Child Protection Act, building forensic and investigative capacity, reform of the legal framework that governs child protection online, and continued investment in community-based prevention initiatives. It concludes that to ensure long-term protection for children in India, there is a need not just for legal reform, but also a structural overhaul of the social and economic factors that give rise to child vulnerability. The whole analysis is done with reference to OSCOLA citation practices.

Keywords: Child Protection, POCSO Act 2012, Juvenile Justice, Child Sexual Abuse, Child Trafficking, Criminal Justice, India, Bharatiya Nyaya Sanhita 2023, Constitutional Law, Child Rights

I. INTRODUCTION

Children are the most vulnerable and innocent members of a society, and the duty of the State to protect children from abuse, exploitation and harm is an imperative. Over the last two decades, India has witnessed significant changes to the criminal justice response to offences against children in light of increasing awareness, judicial activism and legislative reform. However, the interaction between the criminal law and social realities raises complex issues that the criminal justice system is still grappling with. Child protection in India is not a legislative but a constitutional morality. The Constitution of India allows the State to make special provisions for children under Article 15(3), and mandates the State to ensure that children are provided with opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment under Article 39(f).¹ These constitutional provisions underpin a plethora of child protective laws. This assignment provides a critical analysis of crimes affecting children in India, with respect to the substantive criminal law, procedural, institutional and social factors that result in child abuse. It assesses the sufficiency of the legal framework, points out deficiencies and offers reformist viewpoints. This assignment draws on the Protection of Children from Sexual Offences Act 2012, the Juvenile Justice (Care and Protection of Children) Act 2015, the Indian Penal Code 1860 and the recently enacted Bharatiya Nyaya Sanhita 2023, as well as judicial interpretations that have contributed to the development of jurisprudence in this area.

II. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

2.1 Constitutional Provisions

The Indian Constitution provides for a layered framework of child protection. Apart from Articles 15(3) and 39(f), Article 21A enshrines the right to free and compulsory education for children between the ages of six to fourteen years and Article 24 bars employment of children below the age of 14 years in factories, mines or other hazardous employments.² Article 45 (read in light of Article 21A), mandates early childhood education for children aged up to six years. Taken together, these articles confirm that child welfare is an issue of both fundamental rights and directive principles, and creates a binding obligation on the State. The Supreme

¹ Constitution of India 1950, arts 15(3) and 39(f).

² Constitution of India 1950, arts 21A and 24.

Court in *Bachpan Bachao Andolan v Union of India*,³ reaffirmed that the right of children to protection from exploitation is a vital part of Article 21, which guarantees the right to life and liberty. It gave a broad interpretation of 'life' to include the ability to live a life free from abuse, trafficking, and forced labour.

2.2 The Indian Penal Code 1860 and the Bharatiya Nyaya Sanhita 2023

Historically, the Indian Penal Code 1860 ('IPC') contained the main statutory protections against child offences, but was not a specific children's law. Offences of kidnapping and abduction (sections 359-369), sexual offences (sections 375 and 376), exposure and abandonment of a child (section 317) and infanticide (section 315) covered the most serious harm to children.⁴

But the lack of clarity on the definition and evidence of child sexual abuse under the IPC was evident in the late 1990s and early 2000s. Under the previous definition of rape under section 375 IPC, it was required that the penetration be through the vagina and that the offence be committed by a man on a woman, leaving male child victims of sexual assault unprotected. The lawmakers' attempts to reform the IPC finally led to the enactment of the Protection of Children from Sexual Offences Act 2012 ('POCSO Act'). The Bharatiya Nyaya Sanhita 2023 ('BNS') that replaced the IPC w.e.f. 1 July 2024, has maintained the sections on crimes against children, with some changes. BNS sections 94 and 137-140 cover child marriage and kidnapping of minors, respectively. Significantly, section 65 of the BNS enhances the punishment for rape on a woman below the age of 12 years, by providing for imprisonment for a term not less than 20 years, extendable to the death penalty.⁵ This is a stark improvement over the IPC and demonstrates a legislative concern with the gravity of sexual crimes on children.

2.3 The Protection of Children from Sexual Offences Act 2012

The Protection of Children from Sexual Offences Act 2012 ('POCSO Act') is the most important child-specific law in India's criminal justice system. The POCSO Act was enacted as a result of long standing pressure from child rights groups and following India's ratification of the United Nations Convention on the Rights of the Child 1989, to provide a

³ *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1, [34]–[36].

⁴ Indian Penal Code 1860, ss 315, 317, 359–369, 375–376.

⁵ Bharatiya Nyaya Sanhita 2023, s 65.

dedicated, gender-neutral approach for dealing with sexual offences against children under the age of 18 years.⁶

It defines and punishable a range of sexual offences such as penetrative sexual assault (section 3), aggravated penetrative sexual assault (section 5), sexual assault (section 7), aggravated sexual assault (section 9), sexual harassment (section 11) and use of children for pornographic purposes (section 13). Importantly, section 29 includes a presumption of guilt, which states that if a person is charged with any of the offences under the Act, then the Special Court shall presume that the accused has committed the offence unless proven otherwise. This presumption of guilt is a unique feature of the POCSO law, and has attracted considerable judicial attention. The POCSO (Amendment) Act 2019 has enhanced the regime by providing for the death penalty for aggravated penetrative sexual assault of a child under twelve years of age and making provisions for the confiscation of property of convicted persons who use children for pornographic purposes.⁷

2.4 The Juvenile Justice (Care and Protection of Children) Act 2015

The Juvenile Justice (Care and Protection of Children) Act 2015 ('JJ Act') deals with another important aspect of criminal justice involving children that is, children who are accused of committing an offence and those who are "children in need of care and protection". The Act has replaced the Juvenile Justice (Care and Protection of Children) Act 2000, after the public furphy over the December 2012 gang-rape in Delhi in which one of the rapists was a juvenile just below the age of 18.⁸

The 2015 Act introduced the controversial section 15 which allows the Juvenile Justice Board to determine whether a child aged 16-18 years, accused of a heinous offence, should be tried as an adult in a Children's Court. This is hailed as a practical approach to address heinous juvenile crimes and condemned as a shift away from the philosophical underpinning of juvenile justice based on rehabilitation.⁹

III. CATEGORIES OF OFFENCES AGAINST CHILDREN

3.1 Child Sexual Abuse

⁶ Protection of Children from Sexual Offences Act 2012 (POCSO Act), Preamble.

⁷ Protection of Children from Sexual Offences (Amendment) Act 2019, amending POCSO Act 2012, ss 4, 6 and 14.

⁸ Juvenile Justice (Care and Protection of Children) Act 2015, Statement of Objects and Reasons.

⁹ Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* (3rd edn, Oxford University Press 2017) 214–217.

Child Sexual Abuse ('CSA') is perhaps the most prevalent and traumatising type of offence against children in India. The National Crime Records Bureau ('NCRB') reports have consistently shown a rise in the number of cases reported under the POCSO Act; more than 53,874 cases in 2021 alone.¹⁰ But it is well accepted that the reported statistics are underreported, due to the stigma of sexual abuse, fear of family shame and grooming of the child by the offender (who is often known to the child). The family nature of child sexual abuse poses a problem for criminal justice. Research undertaken by governmental and non-governmental agencies in India has revealed that a large number of CSA perpetrators are family members, relatives, neighbours or trusted individuals (such as teachers and priests).¹¹ This closeness raises issues of dependence and complicity, and makes disclosure by the victim incredibly challenging, and investigation and prosecution complex. In *Independent Thought v Union of India*¹² is a case in point. It declared sexual intercourse with a wife between the ages of 15 and 18 years as a rape under section 375 of the IPC, despite an exception that provides that sexual intercourse with a wife is not a rape. The court argued that the exception contravened Articles 14, 15 and 21 of the Constitution of India, and was contrary to the aim of the POCSO Act to protect children.

3.2 Child Trafficking and Forced Labour

Child trafficking is a multifaceted and multi-dimensional domestic and international problem that is linked to several types of exploitation including sexual exploitation, bonded labour, domestic servitude and organ trafficking. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Act 2018, which was introduced in the Lok Sabha, did not become law due to the Rajya Sabha session being prorogued.¹³ This has left the problem of trafficking in India to be dealt with primarily under section 370 and 370A of the IPC (now mirrored in section 143 of the BNS), the Immoral Traffic (Prevention) Act 1956 and the Bonded Labour System (Abolition) Act 1976. Section 370 (amended in 2013) defines trafficking as recruiting, transporting, harbouring, transferring, or receiving a person with the use of threat, force, fraud, deception or abuse of position for the purpose of exploitation.¹⁴ If the victim is under the age of 18, the punishment ranges from ten years' to life imprisonment. The National

¹⁰ National Crime Records Bureau, *Crime in India 2021* (Ministry of Home Affairs, Government of India 2022) ch 5.

¹¹ Ministry of Women and Child Development, *Study on Child Abuse: India 2007* (Government of India 2007) 74–78.

¹² *Independent Thought v Union of India* (2017) 10 SCC 800, [83]–[91].

¹³ Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 (passed by Lok Sabha; lapsed upon dissolution of the 16th Lok Sabha in 2019).

¹⁴ Indian Penal Code 1860, s 370 (as amended by Criminal Law (Amendment) Act 2013).

Crime Records Bureau (NCRB) figures show that West Bengal, Rajasthan, Tamil Nadu and Maharashtra consistently have the highest number of child trafficking cases.¹⁵ Children belonging to marginalised groups (such as Dalits and Adivasis) and from poor families are more vulnerable to trafficking, which makes this offence a highly systemic one.

3.3 Child Labour

Child labour continues to persist in India, despite being banned by the Constitution and prohibited by law. The 1986 (as amended in 2016) Child and Adolescent Labour (Prohibition and Regulation) Act prohibits employment of children under the age of 14 years in any occupation or process and regulates the conditions of work of adolescents between the ages 14 and 18 years by prohibiting them from working in hazardous occupations.¹⁶ However, the 2016 amendments made a qualifying distinction, allowing children to work in family businesses after school, an exemption that child rights activists have called a loophole that allows for disguised exploitation. There is a clear connection between child labour and lack of education. Labouring children miss out on schooling, leading to what is a vicious cycle of poverty and vulnerability, which makes them open to other forms of exploitation. The Right of Children to Free and Compulsory Education Act 2009 seeks to redress this through compulsory education, although this is not always the case, especially in rural and tribal communities.

3.4 Child Marriage

Child marriage, which is outlawed, remains a problem for millions of children in India, especially girls. The Prohibition of Child Marriage Act 2006 ('PCMA') declares child marriages voidable at the option of the party who was a minor at the time of the marriage (section 3), criminalises those who perform, conduct, or abet child marriages (section 9 and 10) and also provides for the nomination of Child Marriage Prohibition Officers.¹⁷

The Supreme Court in *Hardev Singh v Harpreet Kaur*¹⁸ and other cases, has addressed the interplay between the PCMA and personal laws that allow early marriages. It has upheld the secular welfare concerns underlying the PCMA over the exceptions in the personal laws, though reform is yet to be achieved. A very important concern is that of the relationship between child marriage and the POCSO Act. As recently confirmed by the Supreme Court in

¹⁵ National Crime Records Bureau (n 11) ch 7, Table 7.1.

¹⁶ Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (as amended in 2016), ss 3 and 3A.

¹⁷ Prohibition of Child Marriage Act 2006, ss 3, 9 and 10.

¹⁸ *Hardev Singh v Harpreet Kaur* (2020) 3 SCC 671, [18]–[22].

Independent Thought v Union of India,¹⁹ the POCSO Act is applicable to all children, whether or not married, so sexual intercourse with a child spouse is an offence under the POCSO Act. This has implication for the prosecution of child marriages, as well as the protection of girls.

IV. CRIMINAL JUSTICE MECHANISMS AND INSTITUTIONAL FRAMEWORK

4.1 Special Courts and Child-Friendly Procedures

The Protection of Children from Sexual Offences (POCSO) Act provides for the creation of Special Courts in every district for the speedy trial of POCSO offences.²⁰ These courts are expected to adopt child-sensitive procedures such as provision for the recording of the child's evidence in a child-friendly environment, use of intermediaries if required, avoiding aggressive cross-examination methods and ensuring privacy and dignity of the child victim. The POCSO Act's section 36 mandates that the Special Court shall ensure the child is not visible to the accused during the recording of evidence, which includes the use of screens, video-conferencing or video recording. Section 37 of the Act mandates that the evidence of the child victim shall be recorded within 30 days of the Special Court taking cognisance of the offence and section 35 provides that the trial shall be completed within one year.²¹

Yet, the practice of Special Court in India paints a grim picture, inconsistent with such statutory goals. Research suggests the time taken for disposal of POCSO cases is far beyond the statutory mandate of one year, with cases often taking years to be disposed owing to lack of judicial infrastructure, trained prosecutors and judges, excessive adjournments and problems in retaining forensic evidence.

4.2 The Role of the Child Welfare Committee and Juvenile Justice Board

The JJ Act 2015 creates Child Welfare Committees ('CWC') in every district to deal with children in need of care and protection and Juvenile Justice Boards ('JJB') to deal with children in conflict with law.²² The CWC has the authority to place children in need of care and protection in institutions or with suitable foster families, to mandate restoration of children to their parents or guardians and to refer children for psycho-social counselling and rehabilitative services. The JJB, comprising of a Magistrate and two social workers, has the

¹⁹ *Independent Thought* (n 13) [79].

²⁰ POCSO Act 2012, s 28.

²¹ POCSO Act 2012, ss 35–37.

²² Juvenile Justice (Care and Protection of Children) Act 2015, ss 27 and 4.

power to deal with all matters involving children in conflict with the law below the age of 18 years, except for a few heinous crimes in which the 16-18 year old may be tried as an adult under section 15 of the JJ Act. The Board follows the principle of "depenalisation" of juvenile delinquency, which emphasises rehabilitation and reintegration of children into the society, rather than punishment.²³

4.3 The National Commission for Protection of Child Rights

The National Commission for Protection of Child Rights ('NCPCR') is the statutory body set up under the Protection of Children from Sexual Offences Act 2012 and the Commissions for Protection of Child Rights Act 2005, to oversee and uphold the rights of children in India.²⁴ The NCPCR can take up complaints of deprivation of children's rights, review laws and policies that affect children, review mechanisms for the safeguard and protection of children and recommend appropriate measures to the government. State Commissions for Protection of Child Rights ('SCPCRs') operate at the state level with similar powers and responsibilities. While the NCPCR and SCPCRs are statutory bodies, they have been accused of having inadequate staff and finances, and weak enforcement powers, which limit their ability to function as effective monitoring bodies.

V. SOCIAL DIMENSIONS AND SYSTEMIC CHALLENGES

5.1 Poverty, Marginalisation, and Structural Vulnerability

When considering offences against children in India, it is necessary to understand the circumstances that create child vulnerability. Poverty, caste discrimination, gender inequality, displacement and lack of education combine to create a milieu of insecurity in which children especially girls, children from Scheduled Castes and Scheduled Tribes, child migrants and children in institutional care are vulnerable to abuse and exploitation. The continued practice of devadasi in select parts of Karnataka, Andhra Pradesh and Telangana whereby girl children from marginalised communities are dedicated to temples and then sexually exploited is an example of how caste, gender, religion and poverty intersect to fuel child abuse.²⁵ Notwithstanding its specific prohibition under the Karnataka Devadasis (Prohibition of Dedication) Act 1982 and similar acts in other states, the practice persists, suggesting the

²³ JJ Act 2015, s 2(14), defining 'best interest of child' as the basis for all decisions under the Act.

²⁴ Commissions for Protection of Child Rights Act 2005, s 3.

²⁵ UNICEF India, *Child Protection in India: A Situational Analysis* (UNICEF 2020) 43–45.

need for more than criminal law to achieve positive social change, without economic empowerment and attitudinal change.

5.2 Digital Technology and the Emerging Threat of Online Child Sexual Exploitation

The advent of the internet and digital technologies in India has opened up new avenues for child sexual exploitation. Cyber-stalking of children, use of children for pornographic purposes, sextortion and online child sexual abuse material (referred to as "CSAM") are examples of offences that are partially covered by the law. Section 67B of the Information Technology Act 2000 makes the publication, transmission and viewing of material containing depiction of a child engaged in sexually explicit act punishable.²⁶ This section is complemented by the provision on the use of children for pornographic purposes (section 13) in the POCSO Act. But the implementation of these provisions is marred by the technical acumen of offenders and the use of encrypted websites and the dark web, and weak law enforcement response to cyber crimes. The Ministry of Home Affairs' Cyber Crime Portal offers a platform to report child sexual exploitation online, but there is a need to increase awareness about this portal and the response time and communication between different law enforcement agencies has been identified as a key area of concern.²⁷

5.3 Evidentiary Challenges and Secondary Victimization

The prosecution of cases of offences against children is beset by evidentiary problems that often lead to acquittal. The medical examination of child victims, collection and preservation of forensic evidence, admissibility and credibility of a child's testimony, and competency of child witnesses are some of the areas that have proved to be challenging for the criminal justice system. The Delhi High Court guidelines in the case of *Sakshi v Union of India*²⁸ and now codified in section 26(4) of the POCSO Act dictate that the statement of a child victim should be recorded by a woman police officer of a rank not below sub-inspector, and in a place other than a police station. These investigative safeguards aim to reduce trauma for the child victim, but are not always followed. The secondary victimisation re-traumatising children through insensitive interrogation, media coverage and prolonged delays in the justice process continues to be concerning. In the case of *Nipun Saxena v Union of India*,²⁹ has given detailed guidance for the anonymity of the victim of sexual offences, including child victims,

²⁶ Information Technology Act 2000, s 67B (inserted by Information Technology (Amendment) Act 2008).

²⁷ Ministry of Home Affairs, *Annual Report on Cybercrime* (Government of India 2022) 38.

²⁸ *Sakshi v Union of India* (2004) 5 SCC 518, [27]–[30].

²⁹ *Nipun Saxena v Union of India* (2019) 2 SCC 703, [52]–[58].

by barring the name of the victim or any details that might identify the victim to be mentioned in media reports and in public documents of the court.

5.4 Inadequacy of Rehabilitation and After-Care Services

Effective criminal justice responses to child offences cannot take place without adequate rehabilitation and after-care services for victims. The access to, and quality of psychosocial support, legal advice, shelter and economic rehabilitation for child victims in India varies widely across the country. The POCSO Act envisages under section 40 the appointment of a support person to assist the child victim during the legal process and chapter VII of the JJ Act envisages after-care services for children released from institutional care.³⁰ But these operate in a context of poor infrastructure, lack of funding for and a shortage of trained personnel such as psychologists, social workers, and legal services lawyers with child rights expertise.

VI. JUDICIAL CONTRIBUTIONS AND CRITICAL PERSPECTIVES

6.1 Progressive Jurisprudence

Indian courts have through a series of important cases gradually deepened the jurisprudence of child protection. In *Gaurav Jain v Union of India*,³¹ the Supreme Court issued directions to the State against the involvement of prostitutes' children in the sex trade and to provide educational and rehabilitative measures. In *Exploitation of Children in Orphanages in State of Tamil Nadu, In Re*,³² the Supreme Court laid down comprehensive guidelines for the regulation of child care institutions, after reports of widespread abuse. In the case of *Libnus v State of Maharashtra*,³³ caused a public stir when it concluded that acts that did not involve direct skin contact with the private parts of a child did not constitute "sexual assault" under section 7 of the Protection of Children from Sexual Offences (POCSO) Act for lack of "skin-to-skin contact". The ruling was quickly overruled by the Supreme Court in *Attorney General for India v Satish*,³⁴ which found that the term "touch" in section 7 of the POCSO Act does not mean skin-to-skin contact, and found that any physical contact of a sexual nature with intent amounts to sexual assault. The Supreme Court's decision was based on an understanding that a literal interpretation of the POCSO Act would undermine its object.

6.2 Critique of the Presumption of Guilt under POCSO

³⁰ POCSO Act 2012, s 40; JJ Act 2015, ch VII.

³¹ *Gaurav Jain v Union of India* (1997) 8 SCC 114, [61].

³² *Exploitation of Children in Orphanages in State of Tamil Nadu, In Re* (2017) 3 SCC 120.

³³ *Libnus v State of Maharashtra* (2021) SCC OnLine Bom 123.

³⁴ *Attorney General for India v Satish* (2021) 5 SCC 1, [47]–[55].

The presumption of innocence of the accused in section 29 of the POCSO Act, which places the onus on the accused to prove his or her innocence, has attracted intense scholarly and judicial scrutiny. Some authors have argued that this presumption, while well-meaning, creates a risk of convicting innocents in a situation where the allegation is a cover-up for personal and family conflicts; and that it runs contrary to the fundamental criminal law principle of innocent until proven guilty.³⁵

The High Courts have considered the extent and reach of section 29 in many cases, attempting to reconcile the child-protective intent of the presumption with the right to a fair trial in Article 21 of the Constitution. A more subtle approach is emerging in case law that makes the presumption rebuttable when the accused adduces credible evidence to the court, but does not require the accused to prove the offence beyond reasonable doubt.

VII. REFORM AGENDA AND POLICY RECOMMENDATIONS

7.1 Codification of a Comprehensive Child Protection Act

India does not yet have a consolidated child protection law that brings together provisions related to all offences against children in different areas physical, sexual, economic and online - into one comprehensive legislation. The presence of several laws with overlapping and, at times, contradictory provisions leads to confusion among the police, prosecutors and the judiciary. A unified Child Protection Act, based on international best practices like the UK's Children Act 1989 and Sexual Offences Act 2003, would offer a cohesive and user-friendly statutory framework.³⁶

7.2 Strengthening the Forensic and Investigative Ecosystem

To enhance the chances of prosecution for offences against children, it is crucial to have a forensic backup system and child-sensitive investigation officers. Setting up Child Abuse Investigation Units in state police forces with staff trained in trauma-sensitive procedures would enhance investigative practice and the chances of successful prosecution. Compulsory and uniform child-sensitive training for judges, prosecutors, police and medical professionals dealing with POCSO Act and JJ Act cases should be established with the National Judicial Academy and police academies.

7.3 Addressing Online Child Safety

³⁵ Bajpai (n 10) 302–306.

³⁶ Children Act 1989 (UK); Sexual Offences Act 2003 (UK).

The law to combat online child safety needs to be updated. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 require major social media platforms to use technology to detect and report CSAM, but a more specific and comprehensive law similar to the United States' PROTECT Our Children Act is needed to mandate active reporting, international law enforcement cooperation, and the swift removal of illegal material.³⁷

7.4 Community-Based Prevention and Awareness

Legislative change cannot eliminate crimes against children without a commensurate focus on community prevention, awareness-raising and social change. School-based curricula on body safety, safe and unsafe touches, and the importance of reporting child sexual abuse delivered by trained teachers or school counsellors are among the best strategies for preventing child sexual abuse.³⁸ The NCPCR should be tasked and funded to create and promote prevention curricula.

VIII. CONCLUSION

India's crimes against children are a legal, social, economic and moral crisis. The legislative and judicial framework that has built up in the past four decades the POCSO Act, the JJ Act, the BNS and a slew of other laws, regulations and rules are a remarkable achievement of the Indian State, in terms of acknowledging child vulnerability and responding to it. But the gap between the normative expectations of this and the actual lives of millions of children remains vast. Criminal justice responses to offences against children requires not only the creation of new statutes, but also their faithful implementation, backed by the institutional and human resources, as well as the judicial commitment, required for this purpose. It also demands recognition that the criminal law is a necessary but not sufficient means of protecting children. Ultimately, to secure the protection of all children in India, the structural factors poverty, caste discrimination, gender discrimination, lack of education that create vulnerabilities in the first place must be addressed. The project of securing protection for all children in India is one of the most important challenges of constitutional government. The test of any society's concern for justice is what it does for those who can least stand up for themselves. In India this measure must be improved.

³⁷ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021; PROTECT Our Children Act 2008 (US).

³⁸ Smita Chakraburty, *Child Abuse and Neglect: Research and Practice* (Sage Publications India 2019) 189–195.

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