

2024



CENTRE FOR CHILD RIGHTS
NLUJAA



Case Compendium

A case compilation of noteworthy Supreme Court pronouncements concerning rights of children (2018-2024)



2018

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About the Centre

The Centre for Child Rights (CCR) at the National Law University and Judicial Academy (NLUJA), Assam, is a premier Centre of Excellence established to advance research, education, and advocacy on issues related to children. The Executive Council of NLUJA, Assam, established the CCR on January 19, 2015, to address pressing concerns regarding child rights, particularly in the north-eastern region of India. The Centre was officially inaugurated on March 14, 2015, through a national-level event, the National Conference on *Protection of Rights of Children: Issues and Challenges*, underscoring the university's commitment to the cause of child welfare and protection.

India, as the world's largest democracy, is home to the largest population of children globally. While the government has enacted various laws and implemented socio-economic measures for children's welfare, significant challenges persist, especially in underserved regions like the northeast. CCR aims to bridge these gaps by fostering advanced research, facilitating legal and policy advocacy, and raising awareness about child rights. The Centre serves as a knowledge hub for stakeholders, including policymakers, educators, researchers, and civil society, to promote an inclusive and supportive environment for the holistic development and protection of children.

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Message from Faculty Convenor

As the Faculty Convenor for the Centre for Child Rights (CCR), I am driven by the urgent need to address the challenges faced by children in India, a country with the world's largest child population. While we have made strides with progressive laws and policies, issues such as child labor, trafficking, inadequate access to quality education, child marriage, and lack of healthcare continue to affect millions, especially in marginalized communities. These socio-legal challenges are compounded by systemic gaps in implementation, limited awareness, and inequities in access to resources.

At CCR, we are dedicated to bridging these gaps by conducting interdisciplinary research, engaging in evidence-based advocacy, and raising awareness about children's rights. We strive to address pressing issues such as the right to education, protection from abuse and exploitation, juvenile justice, and access to basic services like health and nutrition.

Our vision is to position CCR as a resource hub for policymakers, educators, researchers, and civil society. By fostering collaboration and offering actionable insights, we aim to create an inclusive environment where every child's rights are safeguarded and their well-being prioritized. Together, we can work towards a future where every child, regardless of their socio-economic background, has the opportunity to thrive and achieve their potential.



Dr. Himangshu Ranjan Nath
(Assistant Professor of Law)

I. Sampurna Behrua v. Union of India, (2018) 4 SCC 433

The case was a Public Interest Litigation (PIL) under Article 32, filed by Sampurna Behrua, highlighting the poor implementation of the Juvenile Justice Act, 2000, by State Governments. It focused on failures like the establishment of Child Welfare Commissions, Juvenile Justice Boards, and adequate child care facilities. The petitioner stressed that these failures violated children's fundamental rights, as safeguarded by Articles 21 and 32 of the Indian Constitution, and did not align with international norms such as the UN Convention on the Rights of the Child (UNCRC), to which India is a signatory.

The Supreme Court noted significant gaps in the provision of welfare measures, criticizing the lack of well-equipped observation and shelter homes. It called for systemic reforms including regular meetings of Juvenile Justice Boards, proper training for legal aid lawyers, and enhanced technology use. The Court underscored that the National and State Commissions for the Protection of Child Rights must fulfil their duties effectively.

This landmark judgment emphasized the constitutional and statutory responsibilities to protect children and mandated periodic reviews for robust implementation. Justice Lokur, echoing Nelson Mandela's words, highlighted the importance of nurturing children as the country's future assets.

II. Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291

In this landmark case, the Supreme Court of India addressed the urgent need for expediting trials under the Protection of Children from Sexual Offences (POCSO) Act, 2012. The petitioner highlighted the severe backlog of cases under the POCSO Act and stressed the need for reforms ensuring that these cases are conducted in child-friendly Courts for the speedy and sensitive treatment of victims. The Court issued comprehensive guidelines emphasizing that High Courts must ensure that Special Courts handle POCSO cases efficiently. Presiding officers in these Courts should receive training in child protection and trauma-informed approaches. High Courts were directed to establish Special Courts where they did not already exist and to instruct these Courts to avoid unnecessary delays. The Chief Justices were tasked with forming oversight committees to monitor compliance, with a minimum of a three-judge committee where possible.

Furthermore, the Director General of Police or equivalent officials were instructed to form Special Task Forces to ensure thorough investigations and witness attendance during trials. The Supreme Court underscored the importance of creating a supportive environment for child victims to provide evidence without trauma or intimidation.

This judgment reinforced the intent of the POCSO Act by mandating mechanisms that prioritize the child's well-being and swift justice, protecting children from repeated victimization and upholding their rights effectively.

III. Union of India v. V.R. Tripathi, (2019) 14 SCC 646

In this civil appeal, the Supreme Court dealt with the denial of a compassionate appointment to V.R. Tripathi, the son of a railway employee who had died in service and had contracted a second marriage while the first was still subsisting. The Railway Board had issued a 1992 circular barring the children of second marriages from being considered for such appointments unless the marriage was specifically permitted by the administration. The Court emphasized the legitimacy provided under Section 16 of the Hindu Marriage Act, 1955, which states that children born from null and void marriages are legitimate.

The Court highlighted those compassionate appointments, intended to support families in distress after the loss of their breadwinner, must align with constitutional principles like equality under Article 14. Excluding children deemed legitimate by law based solely on their parentage was ruled as arbitrary and discriminatory.

The Supreme Court concluded that compassionate appointment policies must not contravene constitutional guarantees. It ruled the Railway Board's circular ultra vires and directed the authorities to consider Tripathi's application within three months, ensuring policies do not unjustly bar legitimate children from entitlements.

IV. Lochan Shrivastava v. State of Chhattisgarh, (2022) 15 SCC 401

In this landmark case, the Supreme Court discussed the serious nature of offences committed against children, exploring how the Courts should weigh punishments in conformity with constitutional and international commitments to children's rights. This case originated from Section 302 IPC and applicable sections of the POCSO Act, 2012, after Shrivastava was convicted for rape and murder of a three-year-old, a highly violent case that initially led to his death penalty.

The lawyer for the petitioner contested the death penalty on the basis that it went against the Court's long-standing emphasis on the chance for rehabilitation, a key aspect of sentencing outlined in the Bachan Singh doctrine. When determining if the case met the "rarest of rare" standard, the Court highlighted the need for a detailed sentencing strategy, particularly in POCSO Act cases, which seek to impose tough penalties.

The Supreme Court decided to change the death sentence to life imprisonment, taking into account the socio-economic factors and potential for rehabilitation of the accused. The Court recognised the significant influence on both the victim's family and society but stressed that constitutional obligations necessitate finding an equilibrium between justice and the potential for rehabilitation, even in instances of extreme child abuse.

The ruling emphasises that although harsh punishments are necessary to prevent crimes against children, justice should also focus on rehabilitation to uphold constitutional duties and global standards. This decision highlights the need for strong preventative measures, full enforcement of the POCSO Act, and a fair sentencing approach in cases of serious abuse to protect children in India.



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V. In re, Contagion of Covid 19 Virus In Children Protection Homes,
2021 SCC OnLine SC 426

The Supreme Court of India took suo motu cognizance of the urgent need to protect children residing in childcare institutions (CCIs) amid the COVID-19 pandemic. This public interest litigation, overseen by Mr Gaurav Agrawal, Advocate (Amicus Curiae), underscored the importance of effective measures to safeguard vulnerable children, addressing serious risks posed by the pandemic on institutionalized children's health, welfare, and rights under Article 21 of the Indian Constitution.

The Court identified various shortcomings in handling COVID-19 in CCIs, such as lacking health facilities, overcrowding, and limited medical resources. It stressed that these circumstances infringed upon basic rights and needed urgent action. The ruling required the development of thorough infection control policies in all childcare facilities, which must include isolation procedures, routine health screenings, and adequate medical resources. Moreover, the Court instructed State Governments to create exclusive COVID-19 treatment centers for children, in order to minimize the spread of the virus in the facilities.

Acknowledging the importance of government agencies, the Court directed the National Commission for Protection of Child Rights (NCPCR) and State Commissions to carry out routine inspections, guarantee compliance with safety guidelines, and provide consistent updates on the welfare of children in these establishments.

The Court also required the development of plans for both physical and mental health assistance, especially considering the emotional impact on children during periods of isolation and separation from family members. By emphasizing the obligation of officials to maintain health and safety regulations, the ruling highlights the State's duty to safeguard the well-being of children in institutional settings. This important decision requires immediate and comprehensive measures to be taken, highlighting the importance of strong safeguards for children in times of emergency.



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The bench, consisting of Justices S. Ravindra Bhat and Aravind Kumar, was hearing a petition filed by Bachpan Bachao Andolan, which addressed concerns regarding the protection of victims under the Protection of Children from Sexual Offences (POCSO) Act. The Court's ruling centers on the appointment and qualifications of support persons, emphasizing their crucial role in assisting victims throughout the intricate legal proceedings.

“A support person is to provide information, emotional and psychological support, and practical assistance which are often crucial to the recovery of the child. This can go a long way in helping them cope with the aftermath of the crime and with the strain of any criminal proceedings – in many ways a support person, acts as guardian ad litem for the child”, the Court observed.

The Court further issued guidelines regarding the appointment and qualifications of Support persons and held that “In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the State and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through State institutions and offices is vital during this period.

Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, and their worth and dignity restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it – to ensure its strict implementation, in letter and spirit.”

The Court in this case issued the following guidelines to the State of Uttar Pradesh:

- Assess capabilities in the State with respect to the ecosystem for selection of support persons, their appointments, need for special rules/guidelines/Standard Operating Procedure in regard to their appointment/empanelment, training, career advancement and terms and conditions of employment;
- To achieve the purpose stated above, require the presence of the Chairperson, of the State Commission for the Protection of Child Rights (SCPCR), Secretary, State Legal Service Authority, senior-most President of a JJB and senior-most Chairperson of a CWC in the State, and a representative from the State Commission for Women;
- Prior to this meeting, details may be pursued from each District Child Protection Unit (DCPU), as to the list of support persons maintained by it as per Rule 5(1) – which is to include the names of persons or organisations working in the field of child rights or child protection, officials of children’s homes or shelter homes having custody of children, and other eligible persons employed by the DCPU [as prescribed under Rule 5(6)].

- After due consultations, frame such rules, or guidelines, as are necessary, relating to the educational qualifications and/or training required of a support person [over and above the stipulation in Rule 5(6)], and parameters to identify the eligible institutions or NGOs in the State, which can be accredited to depute qualified support persons, and consequently be added to the District Child Protection Unit (DCPU) directory as contemplated in Rule 5(1);
- Ensure that the DCPU or CWC, as the State authorities as it deems fit, is tasked with conducting periodic training for all support persons in the DCPU directory to impart knowledge not only on the Act, Rules, and the legal and Court procedures involved in prosecuting a POCSO case, but also more fundamentally on communicating and assisting the children of various ages and backgrounds, with the sensitivity the role demands;
- In the guidelines framed, ensure that a reporting mechanism through appropriate formats are prepared, to enable the support persons to send monthly reports as per Rule 4(12) to the concerned CWC, which should then be compiled and sent to the SCPCR, and the State Government;
- Prepare a framework, in the form of a Standard Operating Procedure (SOP) to ensure proper implementation of Rule 12 of the POCSO Rules, 2020, for reporting by the respective CWCs on the specific heads of information collected by them, on monthly basis. This shall include the number of cases, where support persons have been engaged in trials and inquiries throughout the State. The information should also reflect whether they were from the DCPU directory, or with external help from an NGO. Such list shall be reviewed on monthly basis by the SCPCR;
- The SOP prepared, and guidelines framed, are to be communicated to all JJBs and CWCs within a week of its preparation;

- Lastly, it is important to acknowledge that support persons who are independent trained professionals, would need to take up tasks which require intensive interactions in often, hostile environments, and consequently deserve to be paid adequate remuneration. Therefore, though the rules state that such personnel should be paid equivalent to a skilled worker as per the Minimum Wages Act, 1948, this Court is of the opinion that the remuneration paid for the duration of the work, should be commensurate to the qualifications and experience of these independent professionals, having regard to the salaries paid to those with comparable qualifications employed by the government, in PSUs, or other institutions run by the government (e.g. hospitals), and this too may be considered in the meeting to be convened by the Principal Secretary.

The Court also held that the POCSO Act was not merely enacted to fulfill India's international commitments but was a significant step toward creating a safer, more secure environment for the most vulnerable citizens—children and young adults. The Act criminalizes a wide range of abusive behaviors, from verbal and non-verbal actions that discomfort a child to severe crimes like rape and sexual abuse. It also establishes special mechanisms to ensure children have prompt access to justice. However, the Court also emphasized that society's commitment to this cause does not end with the enactment of the law but requires ongoing efforts from those in power to build and maintain effective systems that support and strengthen justice institutions.

The bench of Justices Abhay S. Oka and Rajesh Bindal observed that the Courts cannot impose sentence lesser than the minimum punishments prescribed in POCSO Act.

While considering the appeal, the bench noted that the High Court had found that the accused had put his penis into mouth of the victim aged about 10 years and discharged semen.

The bench said that, given this finding, the accused has committed an offence of aggravated penetrative sexual assault as he has committed penetrative sexual assault on a child below twelve years. Hence, the Court set aside the judgment passed by the Allahabad High Court and restored the order of the 8th Additional Sessions Judge, Special Judge POCSO Act, Jhansi, wherein it passed an order against the accused respondent to undergo rigorous imprisonment for ten years for the offence punishable under Section 6 of the POCSO Act and shall pay a fine of Rs. 5,000/-.

The Court in this case also emphasized the role of the POCSO Act in providing stringent punishment and observed that “The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than...”, the Courts cannot do offence to the Section and impose a lesser sentence.”

The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court."



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VIII. Just Rights for Children Alliance v. S. Harish,
2024 SCC OnLine SC 2611

A Division Bench of Chief Justice D.Y. Chandrachud and Justice J.B. Pardiwala held that the mere viewing, possession and storage of material depicting minors engaged in sexual activity constitutes an offence under the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

The decision brings closure to a long-standing split among High Courts on the question of whether "mere storage" of 'child pornography' can be considered an offence under Section 15 of the POCSO Act, and Section 67B of the Information Technology Act, 2000 ('IT Act'). Specifically, it overturned the Madras High Court's decision in S Harish v Inspector of Police and Another (2024) which had quashed criminal proceedings against a POCSO accused after finding that downloading or watching 'child pornography' was not, per se, penalised under either the POCSO or IT Act.

Justice Pardiwala spoke about the need to reject the terminology of 'child pornography' and adopt in its stead the term 'child sexual exploitative and abuse material', which he noted was more in tandem with the reality of such crimes. He recommended the Parliament to amend the POCSO Act to substitute the terms.

The Court also explained the conclusion through an illustration: For instance, 'A' routinely watches child pornography over the internet, but never downloads or stores the same in his mobile. Here 'A' would still be said to be in possession of such material, as while watching he exercises a considerable degree of control over such material including but not limited to sharing, deleting, enlarging such material, changing the volume etc. Furthermore, since he himself on his own volition is viewing such material, he is said to have knowledge of having control over such material.

The judgment in conclusion held :

"Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession."



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IX. Society For Enlightenment & Voluntary Action v. Union of India,
2024 SCC OnLine SC 2922

In this case while issuing several guidelines to prevent child marriages, the Supreme Court has elaborately discussed how child marriages violate Constitutional rights.

The judgment, delivered in a petition filed by the NGO Society for Enlightenment and Voluntary Action, stated that child marriages violate the rights to self-determination, choice, autonomy, sexuality, health and education of children, resulting in the infraction of the rights under Article 21 of the Constitution.

"Girls who are married off early are not only denied their childhood but are also forced into social isolation on account of being cut off from their natal family, friends and other support systems. They are left to the mercies of their marital home and in-laws and denied their innocence which is native to a meaningful childhood experience. Boys who are married early are forced to take up more responsibilities and are pressured to play the role of a provider to the family, earlier in life. Patriarchy requires members of a marital union to play specific roles. It forces men to play the public role in a marriage and fend for the family by being responsible for its economic and occupational development. Both sexes are adversely affected by forced and early marriage," the Court stated.

The Court in this case also requested the Ministry of Women and Child Development to consider the viability of providing compensation to girls who opt out of marriage upon reaching the age of majority under the NALSA Victim Compensation Scheme or respective State Victim Compensation Schemes. This compensation should be equivalent to that provided to rape victims, ensuring adequate support for those who have escaped child marriage.

Apart from this the Court also directed the State Governments to institutionalize the Juvenile Justice Fund established under Section 105 of the JJ Act. This fund will provide financial assistance in the form of scholarships and stipends specifically for girls at imminent risk of child marriage or whose marriages have been annulled, promoting their educational and social empowerment.



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The Supreme Court of India affirmed the right of mothers with disabled children to take Child Care Leave (CCL), stating that denying such leave constitutes a violation of constitutional duties aimed at ensuring equal participation of women in the workforce.

The bench, led by Chief Justice D.Y. Chandrachud and Justice J.B. Pardiwala, heard a petition regarding the denial of CCL to a woman employed as an assistant professor in a Himachal Pradesh college.

Chief Justice Chandrachud highlighted, *“The participation of women in the workforce is not a matter of privilege but a constitutional necessity. As an ideal employer, the State cannot remain oblivious to this responsibility.”*

It added, *“The provision of child care leave to women sub-serves an important constitutional objective of ensuring that women are not deprived of their due participation as members of the workforce. Otherwise, in the absence of provision for child care leave, a mother may be constrained to leave the workforce.”*

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"Every single minute matters, every single child matters, every single childhood matters."

- Kailash Satyarthi



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