

Criminalising Adolescents for the Choices They Make: At the Cost of Access to Sexual and Reproductive Health



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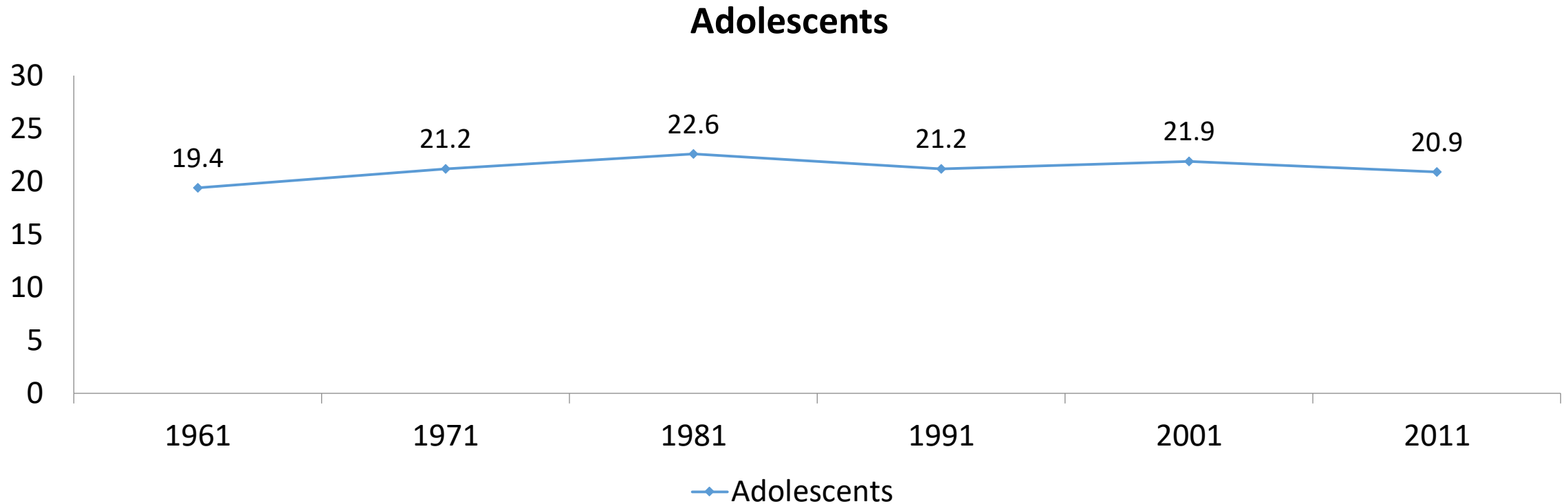
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Definitions that matter

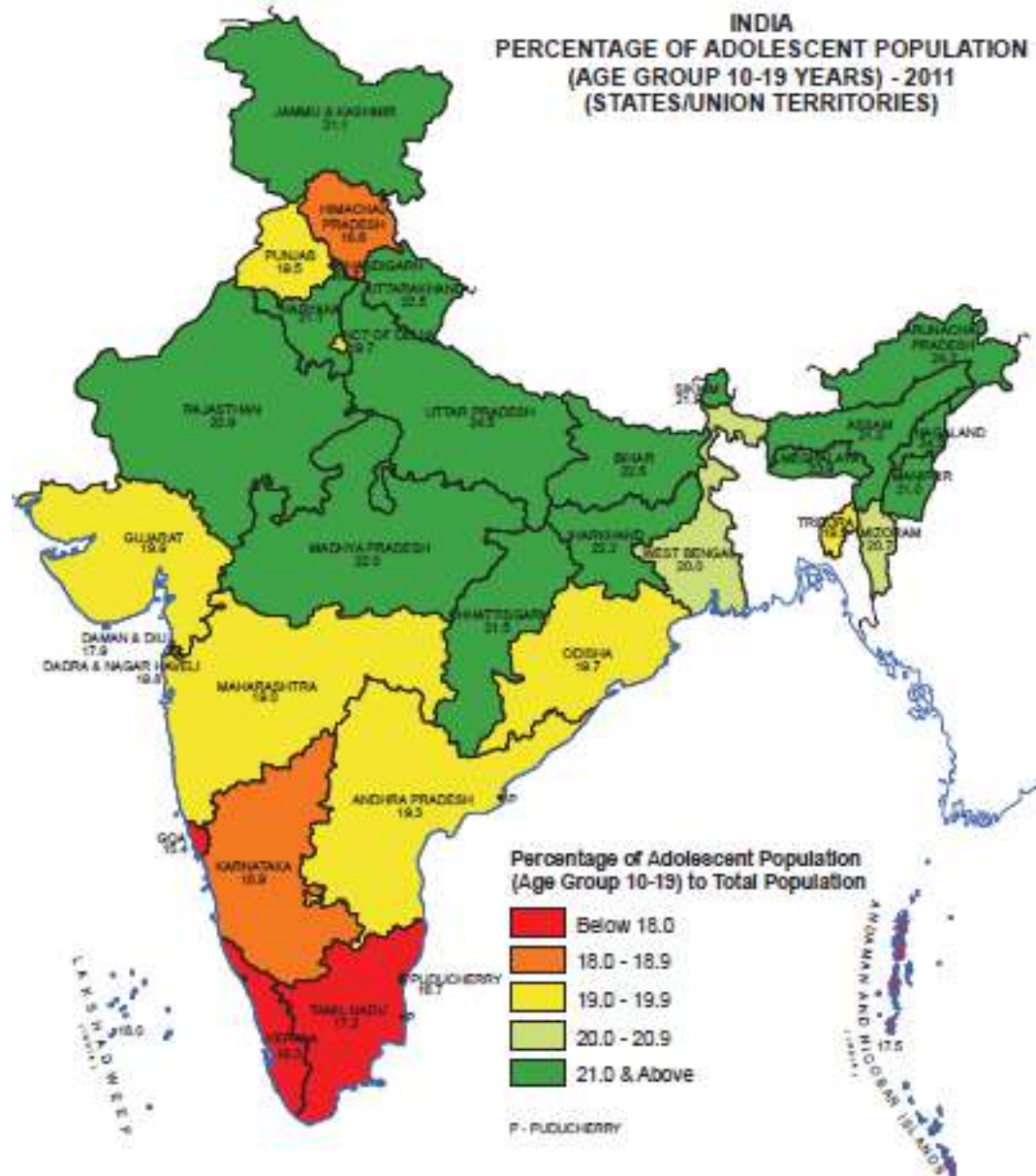
- While there is no universally accepted definition of adolescents, for statistical purposes, without prejudice to other definitions by Member States, the United Nations considers –
 - Adolescent Population: 10 – 19 years
 - Youth Population: 15 – 24 years
- Overlapping age groups implies overlaps in programmes and services too.

Trends in Percentage of Adolescent Population in India, 1961 - 2011



- *Since 1971, the proportion of adolescent population has remained around 21%, though there is net decrease in adolescent population between 2001 and 2011 Census.*

Percent of Adolescent Population, State wise, 2011



Adolescent and Youth Population: State Ranking, 2011

(Million)

Rank	States	Adolescent Population	% to Total Population
	INDIA	253.2	100
1	Uttar Pradesh	48.9	19.3
2	Bihar	23.3	9.2
3	Maharashtra	21.3	8.4
4	West Bengal	18.2	7.2
5	Andhra Pradesh	16.2	6.4

- ***Among the top five states accounting for maximum share of adolescent population in the country, Uttar Pradesh ranks first with 19.3% of total adolescents***
- ***Each of the other four states - Bihar, Maharashtra, West Bengal and Andhra Pradesh - account for less than 10% of the share of adolescent population of the country***

Adolescent Population: Rural-Urban Divide, 2011

(Million)

Total	Rural	Urban	Percentage Distribution	
			Rural	Urban
253	181	72	71.5	28.5

- *72% of the total adolescents in India resides in rural areas (181 million)*

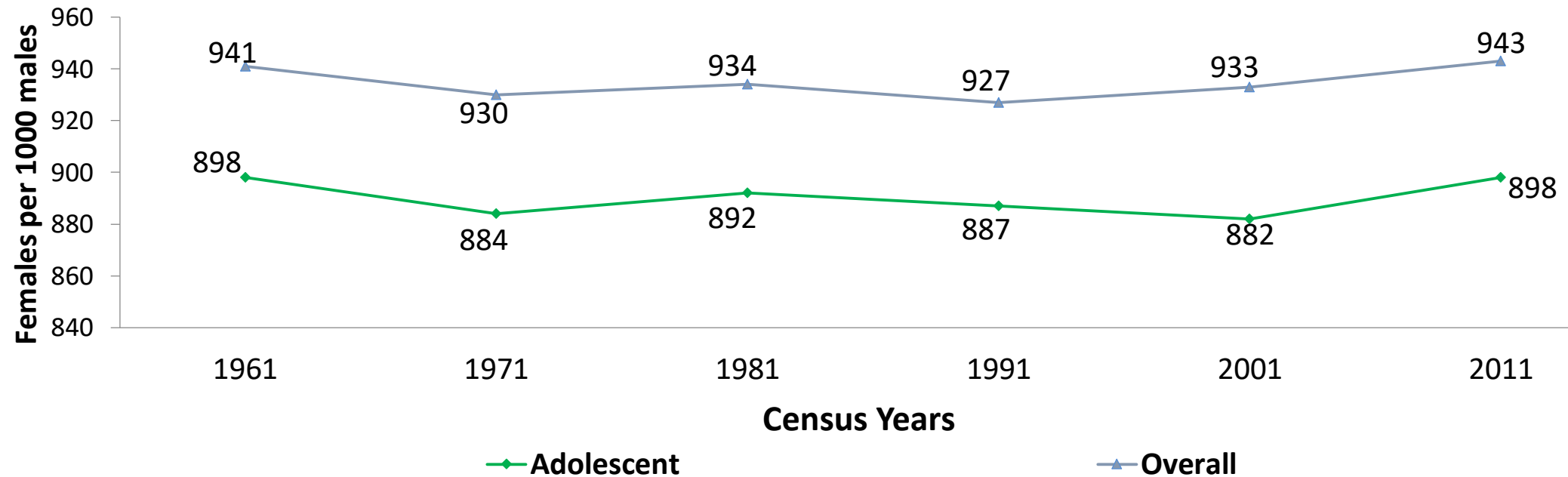
Social Composition of Adolescent Population in India, 2011 : The ones who bear the brunt of law

(Million)

	Adolescent			
	SC	% to total adolescent population	ST	% to total adolescent population
INDIA	44	17.5	23	9.2

- *44 million adolescents belong to SC category, comprising 17% of the total adolescent population*
- *23 million adolescents belong to ST category, comprising 9% of the total adolescents in the country*

Trends in Adolescents and Overall Sex Ratio in India, 1961 – 2011



- *Based on Census data, the adolescent sex ratio in India has been low – with the lowest at 882 in 2001 to the highest at 898 in 2011*
- *It is lower than child sex ratio - 919. This is attributed to sex selective abortions, female foeticide and infanticide*
- *But where are adolescent girls disappearing?*

Top and Bottom Five States in terms of Adolescent Sex Ratio, 2011

Top five states/UTs	Adolescent Sex Ratio	Bottom five states/UTs	Adolescent Sex Ratio
Lakshadweep	1053	Haryana	805
Arunachal Pradesh	983	Punjab	791
Odisha	981	Dadra & N Haveli	775
Meghalaya	979	Chandigarh	756
Chhattisgarh	972	Daman & Diu	584

Trafficking of girls from the top five states to other states, including states like Haryana and Punjab among the bottom five could be a possible cause for disappearance of adolescent girls.

But is that the only cause???

Teenage Pregnancies too take their toll...

According to UNICEF...

- Pregnancy-related complications are the number one cause of death among girls between 15 and 19 years of age.
- <https://www.unicef.org/india/what-we-do/maternal-health>

According to WHO...

- Young adolescents (ages 10-14) face a higher risk of complications and death as a result of pregnancy than other women.
- <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>

According to ORF...

- In India, teenage pregnancy is almost double in rural areas - 9.2%, as compared to urban areas - 5%.
- <https://www.orfonline.org/research/theres-a-need-to-end-teenage-pregnancies-in-india-its-harming-the-national-economy-60307/>

Quoting a UN Report, the ORF Commentary dated 14 January, 2020 suggests that India bears economic losses of \$7.7 billion a year due to teenage pregnancies. An earlier estimate by health ministry suggested economic losses of teenage pregnancies at 12% of the gross domestic product (GDP).

Is this what is bothering the government or a genuine concern regarding early motherhood and teenage pregnancies?

NFHS -5

According to the NFHS-5 factsheets, the percentage of women aged 20-24 who were married before 18 increased in Assam, Manipur and Tripura

Women age 20-24 years married before age 18 years (%)

- Urban - 14.7%
- Rural - 27.0%
- Total - 23.3%

It was 26.8% as per NFHS-4

All women age 15-19 years who are anaemic (%)

- Urban - 56.5%
- Rural - 60.2%
- Total - 59.1%

Data for anaemia in pregnant women aged 15-19 years is not available in the factsheets.

Young women age 18-29 years who experienced sexual violence by age 18 (%)

- Urban - 1.1%
- Rural - 1.6%
- Total - 1.5%

It was 1.5% even during NFHS-4

On Abortions

A 2015 study by Lancet estimates...

- 15.6 million abortions occurred in India in 2015.
- The abortion rate was 47 abortions per 1000 women aged 15-49 years
- 3.4 million abortions (22%) were obtained in health facilities
- 11.5 million (73%) abortions were medication abortions done outside of health facilities
- 0.8 million (5%) abortions were done outside of health facilities using unsafe methods other than medication abortion

- Abortions accounted for one third of all pregnancies, and nearly half of pregnancies were unintended.

- <https://www.thelancet.com/journals/langlo/article/PIIS2214-109X1730453-9/fulltext>

Suicides among Adolescents

According to another study published in the Lancet titled '*Suicide Mortality in India*'...

- 56 per cent suicides among women while 40 per cent deaths in men occurred in the age group 15 to 29 years.
- Suicide is the third leading cause of death in the age group 15 to 24 years.
- <https://timesofindia.indiatimes.com/life-style/health-fitness/health-news/teenage-suicides-the-calamity-of-the-mind-and-how-to-control-it/articleshow/64191555.cms>

According to the NCRB ...

- The 2020 suicide statistics from NCRB suggest that 4.4% suicides are due to 'Love Affairs'.
- 'Family Problems' (4,006), '**Love Affairs**' (1,337) and 'Illness' (1,327) are reported as the **main causes of suicides among children (below 18 years of age)**.

Suicides by Youth in Custody for Alleged Involvement in a Sexual Offence / Romantic Relationship India Torture Report, 2020

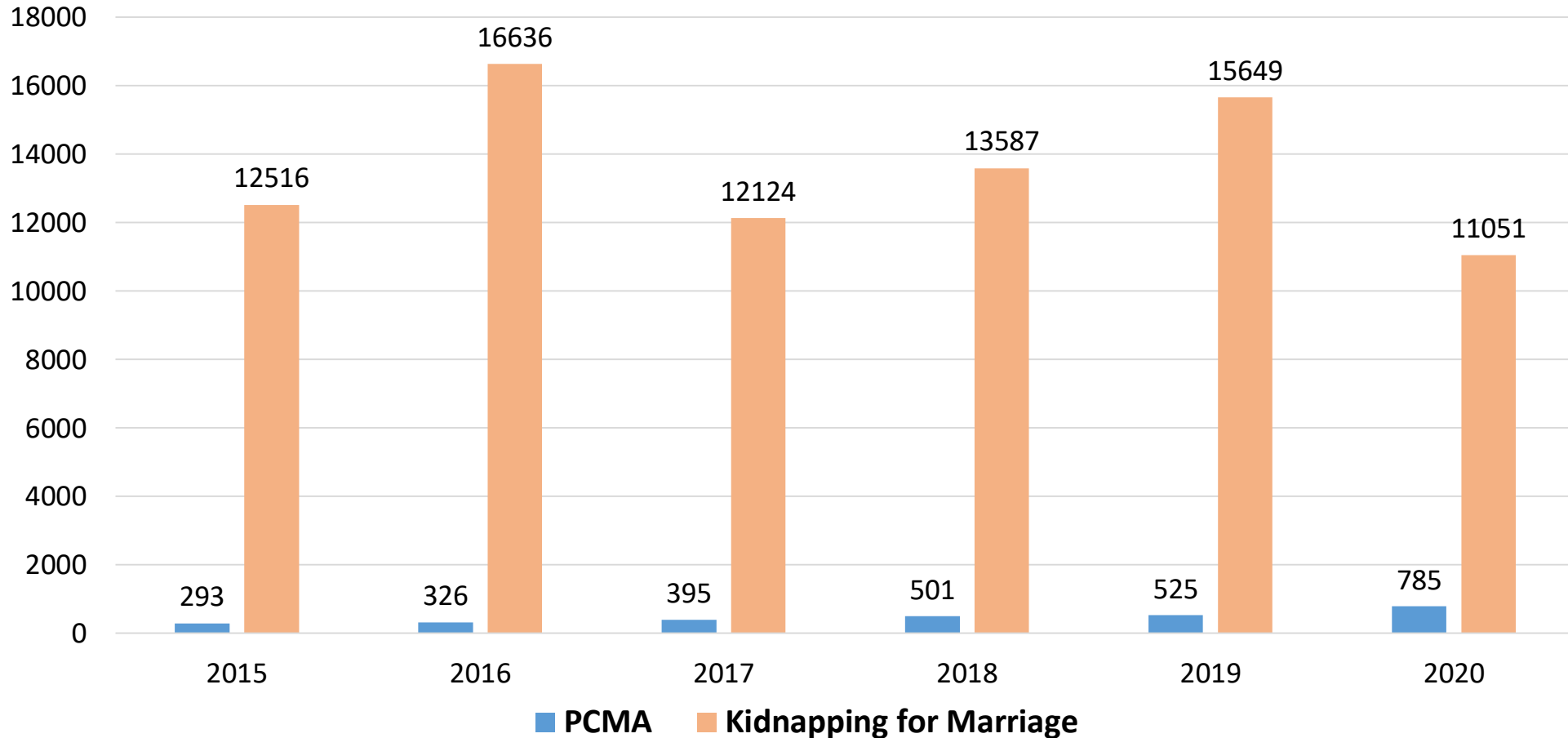
Age Group	Rape	Molestation	POCSO Act	Kidnapping and Illegal Confinement of Minor Girls	Elopement with a Minor Girl	Elopement with a Girl	Missing Minor Girl	Enticing or taking away or detaining a married woman with criminal intent	Total
15-20 years				1		1			2
20-25 years	2	1	1	1	2		1	1	9
25-30 years			1						1
Age Not provided						1			1
Total	2	1	2	2	2	2	1		13

Crimes against Children: Some Trends to Ponder Over

In 2020...

- 11,051 cases were registered under kidnapping and abduction of minor girls to compel her for marriage, showing a decrease of 29% from 15,649 cases in 2019.
- Amongst all cases of kidnapping and abduction of children, kidnapping for marriage has always comprised the highest proportion. 785 cases of Child Marriage under Prohibition of Child Marriage Act, 2006
- Under Prohibition of Child Marriage Act, 2006, Karnataka has registered the maximum number of cases (184 out of 785), followed by Assam (138) and West Bengal (98).
- The maximum number of cases pending investigation from previous year was under Kidnapping and Abduction of children (44,400 out of 60,112).
- Maximum number of IPC cases sent to trial during the year 2020 were for Kidnapping and Abduction (18,350 out of 37,631) and maximum number of SLL cases sent to trial are from Section 4 & 6 of POCSO Act or (Section 4 & 6) r/w Section 376 IPC (26,508 out of 47,554)
- Maximum number of IPC cases pending trial from previous year are cases of Kidnapping and Abduction (98,880 out of 2,03,285) and maximum number of SLL cases pending trial are under Section 4 & 6 of POCSO Act or Section 4 & 6 POCSO r/w Section 376 IPC (78,043 out of 1,49,838)

**No. of Cases under PCMA and Sec. 366 IPC - Kidnapping for Marriage
(2015 to 2020)**
Source: NCRB

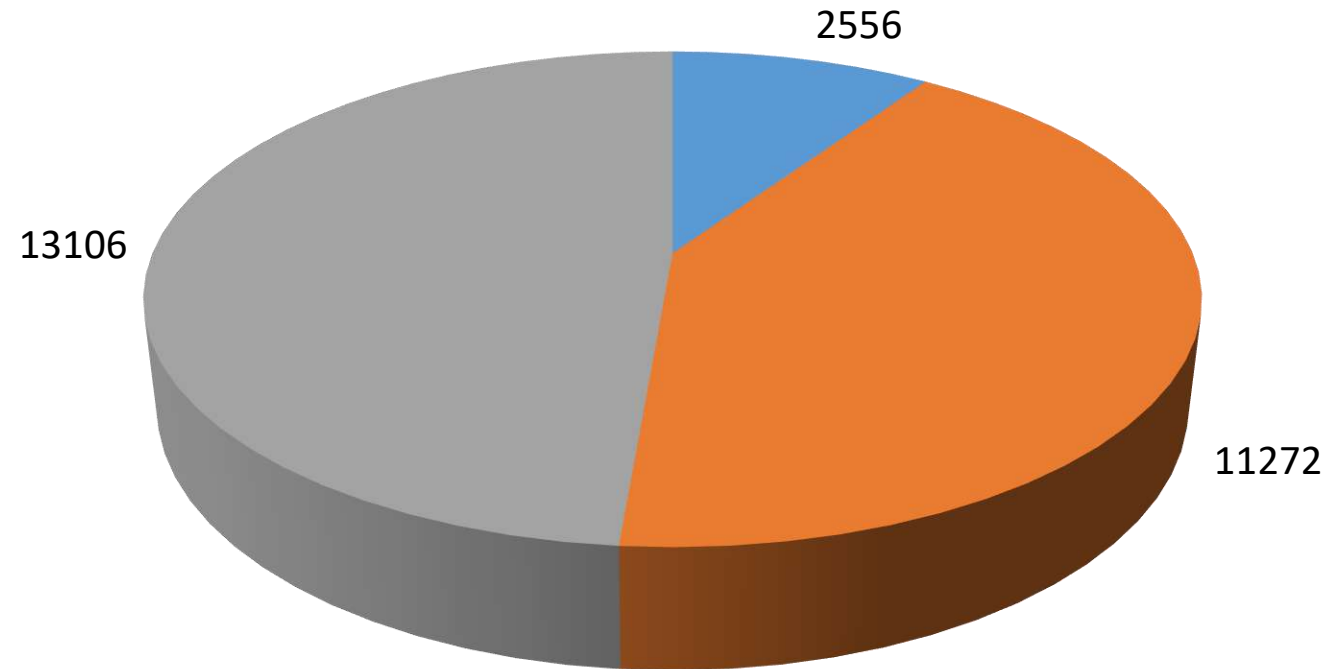


Minor Victims of Kidnapping & Abduction

- In 2015, 61% of total victims of kidnapping of minors for marriage were in the 16 to 18 years age group. In 2016, this came down to 57%.
- 2017 onwards NCRB stopped providing age and gender data for victims of kidnapping by purpose of kidnapping.

Year	Total Child Victims		
	M	F	T
2015	12	12584	12596
2016	1	16937	16938
2017	84	10526	10610
2018	159	11897	12056
2019	129	12613	12742
2020	163	10018	10181

**Categories of Known Offenders in Sexual Crimes against Children
under the POCSO Act
2020
Source: NCRB**



- Family Members
- Family friends, neighbours, employer or other known persons
- Friends/online friends or live-in partners on pretext of marriage

Implementation of the POCSO Act, Goals, Gaps and Challenges: Study of Cases of Special Courts in Delhi and Mumbai (2012-2015)

Some Findings

- In 82.5% cases the accused/ offender was known to the child. Neighbours formed the largest category of 'known' accused / offenders (28%), followed by romantic relationships (26%), and relatives (25%).
- Most sexual offences by 'known' accused / offender were of a serious nature involving penetration or physical contact.
- Maximum acquittals where the accused/offender was 'known' to the child are cases of romantic relationship (39%), followed by cases where the accused/offender is a neighbour (25%), and cases where the accused/offender is a relative (19%). Most common reason for acquittal in such cases was the child and other material witnesses turning hostile. Only 24% of the disposed of cases ended in a conviction.

<https://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

- 94% cases of romantic relationships from Delhi (72 out of 74 cases) and 75% from Mumbai (3 out of 4 cases) ended in acquittal.
- In 94% of these cases the girls were aged 16-18 years.
- Interviews with Judicial Officers in Delhi suggest anywhere between 70% to 80% cases under the POCSO Act are cases of love affair/elopement/love marriage, involving children in the age bracket of 15-18 years.
- In most such cases the girl's family insists on filing a case.

- In many cases of romantic relationship, the accused languish in prisons as bail is not easy to come by.
- Among the cases where bail was granted before the charge sheet is filed, only 3% pertain to cases of romantic relationship.
- The reason for granting bail in these cases was that the “prosecutrix intends to marry the accused” or “having regard to marriage between the prosecutrix and the accused”.
- Once the charge sheet is filed, even this becomes difficult.
- In one case of romantic relationship, where an offence of aggravated penetrative sexual assault was made out in the charge sheet, bail was rejected on the ground that it is an aggravated form of penetrative sexual assault under Section 5 (I) for committing sexual assault more than once or repeatedly.
- In another case, interim bail was granted for seven days subject to the condition that during the period of interim bail the accused shall perform nikah (marriage) with the prosecutrix and then surrender with evidence of the marriage.

A Recent Study of 19,783 POCSO cases by HAQ & CDL shows...

State/UT	No. of Cases of APSA	Cases of APSA with Section 363/366/366A of IPC	Cases of APSA with Section 363/366/366A of IPC as Percentage of Total Cases of APSA
Assam	882	202	23%
Delhi	3529	1361	39%
Haryana	1696	668	39%
Total	6108	2231	37%

State/UT	No. of Cases of PSA	Cases of PSA with Section 363/366/366A of IPC	Cases of PSA with Section 363/366/366A of IPC as Percentage of Total Cases of APSA
Assam	3068	899	29%
Delhi	1309	615	47%
Haryana	1329	688	52%
Total	5706	2202	39%

* APSA – Aggravated Penetrative Sexual Assault

Repercussions of the Law on Access to sexual and Reproductive Health Services

Some Case Studies

Case Study 1

- Child 'Y', aged 16 years, got married in her neighbourhood to a 19-year-old. She got pregnant and went to the hospital with her husband and mother. As luck would have it, her pregnancy of six months got reported and her husband was sent to judicial custody. The doctors who attended the child at the hospital treated them very badly and called the child and her mother as 'jaahil' and 'ganwaar' when they found out about the marriage. This deterred the child from taking proper prenatal care since she was scared that going to the hospital again would result in further doom for her family. With counselling and great persuasion from the support person, the child agreed to deliver her baby in a hospital. She had started believing that the doctors are untrustworthy. Her husband is still in JC. Child remains adamant that she does not want to go to the hospital for postnatal care or vaccinations for her child.

Case Study 2

- Child 'L' was 14 years when she eloped with her boyfriend age 21 years, out of the fear that her parents will not accept her relationship. When 'L' went missing her father filed a missing complaint in the police station and after approximately 5 months 'L' was traced and brought back to Delhi. When she came back to Delhi she was taken to the hospital for medical examination and it was found that she is pregnant. 'L' was then produced before the CWC where she stated that she married her boyfriend and consented for the sexual relationship. She was then informed about the POCSO case and later she taken to the hospital with the consent of the family for the MTP. However, she ran away from the hospital. There was no information about her whereabouts for two years. She is currently living with her boyfriend/ husband in his native village.

Case Study 3

- Child 'K' (aged 17 years) eloped with her boyfriend (aged 20 years) and got married to him in a small temple. After a few months, child went to a private hospital due to issues with her menstrual cycle and the private hospital refused to conduct a proper examination of the child and referred them to a government hospital. After tests at the government hospital, child found that she was pregnant and her pregnancy got reported due to her being underage. Since her husband accompanied her to the hospital, he was taken in police custody. The doctors at the hospital threatened to put everyone in jail- her mother, her in-laws, and even the priest at the temple who solemnized the marriage. Soon after, child and her family relocated to their native village without informing anyone and stopped responding to any phone calls from the IO or the support person assigned by the CWC. After three months, finally the support person managed to get through to the child's mother, but she remained suspicious of the support person's involvement in the case - she still believed that the police would take her away. Because of the fear of authorities, child and her family did not go to any government hospital or city hospital and the child delivered her newborn at home with the help of a local *dai* (midwife) who also gave her a tetanus shot after the delivery.

Clearly, there are two situations that need to be considered and dealt with differently...

- **Situation A** – where a minor is forced into marriage - a case in point for non-acceptance and non-use of law, recourse in informal ways of dealing with such situations and poor rate of crimes registered under the PCMA
- **Situation B** – where a minor gets into a romantic relationship that results in underage marriage or consensual sex - increased criminalisation of children aged 16-18 years for exercising their agency and choice despite CRC recognising evolving capacities of children and age appropriate response

The interplay of PCMA with other laws such as the JJ Act, POCSO Act, MTP Act and the contradictions that render children and young people more vulnerable and subject them to a punitive regime instead of securing their rights.

What must guide all action...

CRC General Comment No. 20 *on the implementation of the rights of the child during adolescence*, 6 December 2016

- While the Convention recognises the rights of all persons under 18 years, **the implementation of rights should take account of children's development and their evolving capacities. Approaches adopted** to ensure the realisation of the rights of adolescents differ significantly from those adopted for younger children.
- **Generic policies designed for children or young people often fail to address adolescents in all their diversity** and are inadequate to guarantee the realization of their rights.
- The costs of inaction and failure are high: the **foundations laid down during adolescence in terms of emotional security, health, sexuality, education, skills, resilience and understanding of rights will have profound implications**, not only for their individual optimum development, but also for present and future social and economic development.
- CRC General Comment No. 20 highlights the importance of a **human rights-based approach that includes recognition and respect for the dignity and agency of adolescents; their empowerment, citizenship and active participation in their own lives; the promotion of optimum health, well-being and development; and a commitment to the promotion, protection and fulfilment of their human rights, without discrimination.**

- **Positive early childhood interventions** and experiences facilitate optimal development as young children become adolescents. The Committee therefore underlines the importance of a **life-course perspective**.
- The Committee stresses that **engaging adolescents in the identification of potential risks and the development and implementation of programmes to mitigate them will lead to more effective protection**. By being guaranteed the **right to be heard, to challenge rights violations and to seek redress**, adolescents are enabled to **exercise agency progressively in their own protection**.
- The Committee stresses that, **when determining best interests**, the **child's views** should be taken into account, **consistent with their evolving capacities and taking into consideration the child's characteristics**.
- States should **ensure that adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives**, at school and at the community, local, national and international levels.
- The Committee notes that **adults' understanding and awareness of adolescents' right to participation is important for adolescents' enjoyment of that right**. It encourages States to **invest in training and awareness-raising, particularly for parents and caregivers, professionals working with and for adolescents, policymakers and decision makers**.

- States should also recognize the importance of engaging with boys and men, as well as girls and women, in all measures introduced to achieve gender equality.
- Adolescents with disabilities are widely denied access to sexual and reproductive health information and services and may be subjected to forced sterilization or contraception, which is in direct violation of their rights and can amount to torture or ill-treatment.
- The Committee emphasizes the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.

- The Committee recommends that States introduce minimum legal age limits, consistent with the right to protection, the best interests principle and respect for the evolving capacities of adolescents.
- For example, age limits should recognize the right to make decisions in respect of health services or treatment, consent to adoption, change of name or applications to family courts.
- The voluntary and informed consent of the adolescent should be obtained whether or not the consent of a parent or guardian is required for any medical treatment or procedure.
- Consideration should also be given to the introduction of a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services.
- The Committee emphasizes that all adolescents have the right to have access to confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish. This is distinct from the right to give medical consent and should not be subject to any age limit.
- States parties should take into account the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent.
- States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.

Thank You!