

Trends in Child Marriage

Insights from Judgments under the Prohibition of Child Marriage Act, 2006
in Assam, Maharashtra and Tamil Nadu



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*Insights from Judgments under the
Prohibition of Child Marriage Act, 2006 in
Assam, Maharashtra and Tamil Nadu*

by Enfold Proactive Health Trust



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Abbreviations

BNS	Bharatiya Nyaya Sanhita, 2023
CCI	Child Care Institution
CMRA	Child Marriage Restraint Act, 1929
CrPC	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
FIR	First Information Report
IPC	Indian Penal Code, 1860
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
NCRB	National Crime Records Bureau
PCMA	Prohibition of Child Marriage Act, 2006
PJMF	Patrick J. McGovern Foundation
POCSO Act	Protection of Children from Sexual Offences Act, 2012
r/w	Read with
SC/ST Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Introduction

The Prohibition of Child Marriage Act, 2006 (PCMA) was enacted in 2006,¹ replacing the Child Marriage Restraint Act, 1929 (CMRA).² The PCMA prohibits “the solemnization of child marriages” and defines a child as “a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age”.³ It prescribes punishment for persons conducting, abetting, promoting or permitting child marriages, and adult males marrying underage girls. The PCMA also provides several civil reliefs, primarily the option to nullify the child marriage by the party who was underage at the time of the marriage, at any time within two years of attaining majority. In addition to the PCMA, there are other penal provisions that may be applicable based on circumstances of the case. For instance, consummation of a marriage with a person below 18 years will fall within the ambit of rape under the Indian Penal Code (IPC)/Bhartiya Nyaya Sanhita (BNS),⁴ and any sexual act with a minor will constitute an offence under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). In cases of child marriage where the child is reported missing, the accused may also face charges of kidnapping under IPC/BNS.⁵ Other charges such as those of trafficking under the IPC/BNS⁶ or charges under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act), may be applicable based on the circumstances of each case.

According to National Family Health Survey (NFHS) data, among women aged between 20 to 24 years surveyed in India, the percentage who were married before the age of 18 was 47.4% in NFHS-3 (2004 to 2005),⁷ which declined to 26.8% in NFHS-4 (2015 to 2016),⁸ and further declined to 23.3% in NFHS-5 (2019 to 2021).⁹ The NFHS data indicates that from 2019 to 2022, nearly a quarter of women aged 20 to 24 years were married before the age of 18 years. In the same period, only 3362 incidences of child marriage were reported under the PCMA.¹⁰ The actual number of cases will be slightly higher as when multiple offences arise from the same incident, the National Crime Record Bureau (NCRB) only considers the one that carries higher punishment while compiling the crime data.¹¹ Nonetheless, there appears to be a gulf between incidence and prosecution of child marriages and this may largely be due to the social sanctity that marriage enjoys, making the use of the criminal law to disrupt marital life an exception.

1 It came into effect on 1st November, 2007 vide Notification F. No. 10-5/2007-CM, dated 30th October 2007, in Gazette of India (Extraordinary).

2 PCMA, s 21.

3 PCMA, s 2(a).

4 IPC, s 375, Exception 2 read with *Independent Thought v Union of India* [2017] 10 SCC 800; BNS, s 63(vi).

5 IPC, s 361 r/w IPC, s 363 BNS, s 137(1)(b) r/w s 137(2).

6 For examples of cases where children are trafficked for the purpose of child marriage, see UNICEF, Ministry of Women and Child Development and HAQ Centre for Child Rights, ‘Handbook on The Prohibition of Child Marriage Act, 2006’ (*Archive*) 6 <https://web.archive.org/web/20141021064048/http://www.unicef.org/india/Child_Marriage_handbook.pdf> accessed 4 June 2024; Human Rights Law Network, ‘Child Marriages and the Law in India’ (*SLIC, 2005*) 37 <<https://slc.org.in/uploads/2019/01/child-marriage-and-the-law.pdf>> accessed 5 June 2024.

7 Ministry of Health and Welfare, ‘National Family Health Survey (2015 to 2016) India Fact Sheet: India Key indicators’, 3 <<https://rchiips.org/nfhs/pdf/NFHS4/India.pdf>> accessed 5 June 2024.

8 *ibid*.

9 Ministry of Health and Welfare, ‘National Family Health Survey (2015-2016) India Fact Sheet: India Key indicators’, 3 <https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf> accessed 5 June 2024.

10 National Crime Records Bureau, *Crime in India* 2019 Vol.1, Table 4A.2(ii), p. 315, & *Crime in India* 2020 Vol.1, Table 4A.2(ii), p. 319; National Crime Records Bureau, *Crime in India* 2021 Table 4A.2(ii), p. 335; National Crime Records Bureau, *Crime in India* 2022 Table 4A.2(ii), p. 335.

11 See National Crime Records Bureau, *Crime in India* 2021, Vol-1, “Limitations”.

Data on the PCMA from Crime in India, NCRB				
	2019	2020	2021	2022
Number of reported cases ¹²	525	785	1050	1002
Conviction Rate ¹³	12%	16.7%	9.7%	11%
Pendency Rate ¹⁴	93.5%	98.3%	96.4%	94.4%

Crime in India data is also limited to State-wise number of cases reported under the PCMA and the manner of disposal of cases by the police and courts at the national level only. Granular data on the specific offences, combination of offences, nature of testimony of victims, age determination, and factors responsible for the conviction and acquittal of such cases, is not available. These data gaps present a challenge in assessing the extent and manner of implementation of the PCMA, particularly on aspects such as the interplay of the PCMA and POCSO Act, the type of marriages i.e arranged/forced and self-initiated that are coming under the ambit of criminal law, the profile of informants, accused persons and victims in these cases

Objectives

The present report seeks to examine criminal proceedings under the PCMA to understand the manner in which cases enter the justice system and the trends in these cases such as the nature of child marriages, victim testimony, outcomes, sentencing, etc. The evidence generated is intended to shed light on how the PCMA is being utilised with the POCSO Act and the gaps in investigation and prosecution in these cases to contribute towards policy and legislative reforms related to child marriage.

This report presents key findings of analysis of 174 judgments under the PCMA from Assam, Maharashtra, and Tamil Nadu. It contains analysis of the nature of child marriages, the profiles of victims, informants, and accused persons, interplay of POCSO Act and PCMA as reflected in the charges applied in these cases, the nature of victims' testimonies, and factors influencing the outcomes in such cases. Further, it offers recommendations and reflections that are relevant for policy makers and stakeholders.

Methodology

For judgment analysis, an upper limit of 200 judgments pertaining to criminal trials before trial courts under the PCMA, registered and disposed between 1 January 2015 and early 2023 from three states was considered. Civil cases such as petitions for annulment of marriage, maintenance, and custody were excluded. Judgment texts of bail petition, appeals, and interim orders, were excluded.

State Selection

For the selection of three states, the following factors were considered:

- Extent of child marriage cases in the state based on NFHS data, NCRB data, and eCourts data
- Availability of judgments relating to criminal trials in English language
- Geographical diversity

Crime in India reports published by the NCRB were considered to understand the state-wise number of cases registered under the PCMA. To gauge the extent of child marriage cases before courts, data scraping tools were used on the eCourts platform to quantify the number of cases under PCMA.¹⁵ The NFHS served as an indicator of the prevalence of child marriage in a given State. The top five States with the highest

12 National Crime Records Bureau, *Crime in India* 2019 Vol.1, Table 4A.2(ii), p. 315, & *Crime in India* 2020 Vol.1, Table 4A.2(ii), p. 319; National Crime Records Bureau, *Crime in India* 2021 Table 4A.2(ii), p. 335; National Crime Records Bureau, *Crime in India* 2022 Table 4A.2(ii), p. 335.

13 National Crime Records Bureau, *Crime in India* 2019 Vol.1, Table 4A.5, p. 337 & *Crime in India* 2020 Vol.1, Table 4A.5, p. 341; National Crime Records Bureau, *Crime in India* 2021 Table 4A.5, p. 357; National Crime Records Bureau, *Crime in India* 2022 Table 4A.5, p. 357.

14 *ibid.*

15 It must be noted, however, that multiple proceedings may arise from a single incident of child marriage, as the accused may apply for bail in the matter, or the victim may petition for other reliefs.

aggregate of cases registered on the eCourts portal were examined along with the corresponding figures from NCRB crime data and NFHS. Finally, judgments from the States of Assam, Maharashtra and Tamil Nadu were selected for analysis. Refer to the table below for the rationale applied in selection of states for judgment analysis.

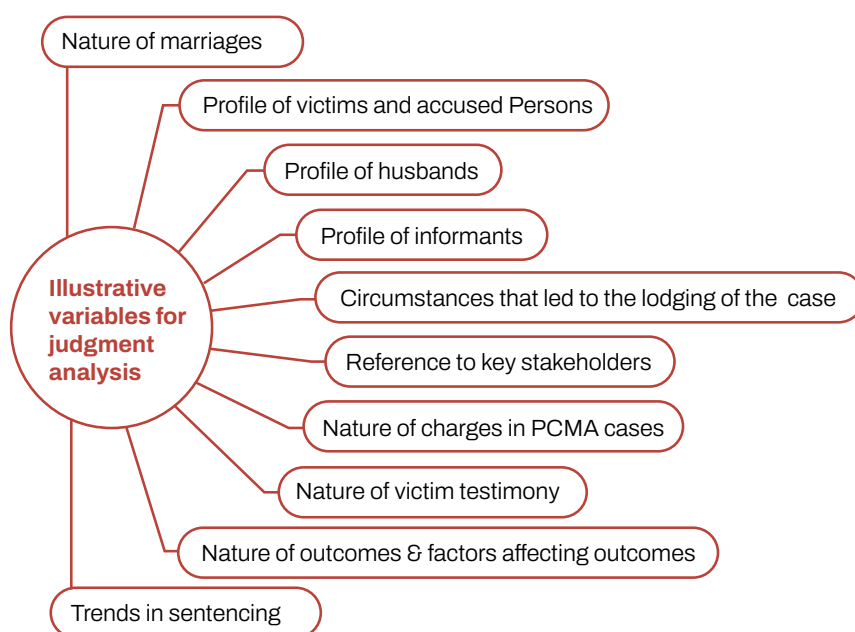
Sl. No.	State	No. of cases on eCourts (2015 to January 2023)	No. of cases reported under PCMA as per Crime in India, NCRB (2015 to 2021) ¹⁶	NFHS-5 (2019 to 2021) Women aged 20-24 years married before age 18 years	Reasons for Selection/ Exclusion
1	Tamil Nadu	5228	546	12.8%	Although prevalence of child marriage is low as per NFHS, Tamil Nadu had the highest number of cases under the PCMA as per eCourts data, and was hence selected.
2	Karnataka	3233	792	21.3%	Excluded as judgments were not available in English
3	Maharashtra	1789	225	21.9%	Third-largest number of cases on eCourts and highest in West region, prevalence of child marriage was close to the national average of 23.3% and the judgments were available in English.
4	West Bengal	1179	473	41.6%	Fourth largest number of cases on eCourts and highest in East region, prevalence of child marriage is highest as per NFHS, judgments were available in English. The State was, however, excluded due to the limitations of time and resources.
5	Assam	1038	591	31.8%	Fifth largest number of cases on eCourts and highest in North-East region, high prevalence of child marriage, with also a high number of cases registered under PCMA. Judgments were available in English. It was selected in light of the recent spate of mass arrests and prosecutions under PCMA. ¹⁷

Selection of variables & data extraction

¹⁶ *Crime in India* data for the year 2022 had not been released at the time of conception of the study.

¹⁷ Mukut Das, 'Over 1,000 Arrested in Fresh Crackdown Against Child Marriages in Assam' (*Times of India*, 3 Oct 2023) <<http://timesofindia.indiatimes.com/article/show/104121970.cms>> accessed 5 June 2024; Biswa Kalyan Purkayastha, '1,039 People Arrested as Part of Crackdown on Child Marriages in Assam' (*Hindustan Times*, 3 Oct 2023) <<https://www.hindustantimes.com/cities/others/1039-people-arrested-as-part-of-crackdown-on-child-marriages-in-assam-101696322785041.html>> accessed 5 June 2024; Zoya Mateen, 'Assam: India Child Brides Desperate After Mass Arrests' (*BBC News*, 10 Feb 2023) <<https://www.bbc.com/news/world-asia-india-64564861>> accessed 5 June 2024.

For the purposes of data extraction from judgment texts, both manual and automated methods were utilised. Majority of the variables were extracted manually as they required understanding of the context and application of the law such as the testimony of victims, relationship between the parties, nature of child marriage, and age-determination procedure followed by the courts. Objective variables with clear and definite information such as final outcomes, number of accused persons, charges, compensation, and references to terms like “Childline”, “Child Welfare Committee”, “hostile”, etc. were extracted using automated tools. Accuracy of extraction was tested, and based on the findings, the algorithm was improved to enhance accuracy and sentences in which certain terms appeared were also extracted to help understand the context of reference. Owing to a high error rate in respect of variables such as number of accused persons, place of marriage, and charges, they had to be verified manually.



Limitations

1. Judgments were at times not detailed and lacked crucial information leading to data gaps, particularly about the age of victims.
2. Judgments from Tamil Nadu were found to have extracts of evidence in Tamil language, and these were analysed using Google Lens and the possibility of inaccurate translations exists.
3. Due to the selection criteria of including judgment texts in English language, judgments in vernacular languages were excluded.
4. This report does not offer insights on the complex causes of child marriage or the socio-economic profile of parties, as these details are not mentioned in most judgments.

For a full dataset of the 174 PCMA judgments part of this study, please scan the QR code or refer this link - (<https://justicehub.in/dataset/analysis-pcma-2015-2023>).



Summary of Key Findings

Nature of Child Marriages being prosecuted

- 86 out of 174 cases (49.4%), were of self-initiated marriages, characterised by elopements, or the victim leaving home (in 77 cases) to get married to the person of her choice.
- 55 cases (31.6%), were of arranged/forced marriage, predominantly arranged by the victims' parents and other family members, and in some cases by the husband and his relatives etc. In 20 cases, the victim expressly stated that she had been forced, coerced, or threatened to enter into the marriage.

Profile of parties in Child Marriages

- 175 of 176 victims (99.4%) were female and only one was (0.6%) male.
- Girls aged 16 to 17 years constituted 44.6% (78 victims) and those between 15 to 17 years were 60% (105 victims) of the total victims, pointing to the trend of child marriages being more amongst older adolescents than younger children.
- Of the 121 husbands whose age-related information was available, 78 (44.6%) were below the age of 26 years, of whom 21 husbands were below the legal age of marriage i.e., 21 years.
- Victim was pregnant at the time of FIR in 24 cases (13.8%) and had given birth to a child in 29 cases (16.7%). In 15 cases, the pregnancy led to the case, signalling a link between accessing reproductive health care and triggering the criminal justice system.

Who reported Child Marriages?

- Informants were primarily the victim's parents, sibling, and relatives in 95 cases (54.6%), followed by third-parties in 42 cases (24.1%), and victims in 26 cases (14.9%).
- Doctors or hospital staff were the informant in 10 cases, prompted by pregnancy (nine cases) and suicide (one case).

Circumstances in which cases were reported

- Out of the 174 cases, only 55 (31.6%) involved a complaint being filed specifically because a child marriage had occurred.
- Victim's family predominantly filed complaints in self-initiated marriages, i.e., in 69 out of 86 cases (80.2%). In contrast, they reported only 17 out of 55 cases (30.9%) of arranged/forced marriages.
- Of the 26 cases reported by victims, 19 were arranged/forced marriages, five were self-initiated, and two were unclear.
- Third parties filed cases against both arranged/forced child marriage, as well as self-initiated marriages.

Who was charged under PCMA?

- There were a total of 515 accused persons in the 174 cases of which 74.4% were male and 25.6% were female.
- 172 accused (33.4%) were parents and relatives of the victim and the husband; 154 (29.9%) were the husbands; and 39 (7.6%) were external entities like villagers, acquaintances, friends, neighbours, etc.

Nature of Charges and Interplay with POCSO Act

- Under the PCMA, accused persons were charged under Section 9 (Punishment for male adult marrying a child) in 134 cases, Section 10 (Punishment for solemnising a child marriage) in 84 cases, and Section 11 (Punishment for promoting or permitting solemnisation of child marriages) in 58 cases.
- In 122 of 174 (70.1%) cases, the accused were also charged under the POCSO Act. They were charged under Section 6 (Punishment for aggravated penetrative sexual assault) in 91 cases and under Section 4 (Punishment for penetrative sexual assault) in 47 cases.
- In 124 cases (71.3%), the accused also faced charges under the IPC, predominantly under kidnapping related provisions in 87 cases and rape related provisions in 57 cases.
- Kidnapping charges were found in 67 of the 86 (77.9%) self-initiated marriages.

Nature of Victim's Testimony

- Victims did not incriminate the accused persons in majority of the cases i.e., 143 (82.2%). They testified against the accused in only 14 cases (8%), of which in 11 cases the marriage was arranged/forced and in three cases it was self-initiated.
- The victim was expressly declared hostile in 67 cases (38.5%).
- In 80 of the 86 self-initiated cases (93%), the victim did not incriminate the accused. Testimonies revealed that they insisted the marriage or relationship was consensual and often claimed they were not a "child" at the time of marriage.

Outcomes and Factors Affecting Outcomes

- 167 cases (96%) resulted in an acquittal, and convictions were recorded in only seven cases (4%).
- Conviction was recorded in only one case of a self-initiated marriage and in six cases of arranged/forced marriages.
- Acquittals took place largely because the victim did not incriminate the accused, the prosecution was not able to establish her age, there was lack of evidence on the solemnisation of the marriage, and/or the courts considered the consensual nature of the relationship.
- In 60 cases (34.5%), the prosecution was successful in establishing the minority of the victim, yet in 53 cases out of these 60 the accused was acquitted as the victim either did not incriminate the accused or appear in court.

Sentencing and Victim Compensation

- 26 accused persons in seven cases were convicted and sentenced under the PCMA.
- Sentences under PCMA ranged from imposition of fine to the maximum imprisonment of two years. Fines ranged from Rs. 500 to Rs. 25,000.
- The highest sentences were imposed under the POCSO Act in two cases of forced marriages. The husband was sentenced to life imprisonment for the remainder of natural life in one case, and the father was sentenced to life imprisonment under Section 6, POCSO Act in another case.
- Of the 174 cases, compensation was ordered in only four cases (2.3%) where the accused was also convicted under the POCSO Act.

1. Nature of Child Marriages being Prosecuted

1.1. Extent of Arranged/Forced Marriages and Self-initiated Marriages

Indian law takes a homogenous view of child marriages and does not distinguish them based on the nature of initiation of the marriage, the element of consent of the parties, or the circumstances leading to the solemnisation of the marriage. Recent programmes on child marriages have however, emphasised the need for this distinction as “**differing patterns of adolescent pregnancy, child marriage and early union ... require tailored intervention strategies.**”¹⁸ UNICEF & UNFPA further underscore that:

“One size will not fit all. Effective interventions will understand the decision-making processes and address the drivers, in a specific context, whether at national or sub-national levels. Evidence-building is key to understanding the situation and how patterns of child marriage, early union and adolescent pregnancy vary for specific population groups.”¹⁹

For the purposes of this study, the following categorisation of UNICEF & UNFPA on child marriage have been adopted, namely:

- **Self-initiated marriages:** According to UNICEF and UNFPA, “self-initiated” marriages are “when young people decide to marry, elope or cohabit in order to have a sexual or ‘love relationship’.”²⁰ Although consent of both parties is factually present in self-initiated marriages, consent may be influenced by social realities and as a means to “escape abusive circumstances or forced marriage.”²¹ Furthermore, parties may be driven to opt for marriage as it socially sanctions living with and engaging in sexual activity with one’s partner or legitimises a pregnancy.²² Taboos around adolescent sexuality, fear of being separated from their chosen partner, stigma attached to premarital sex, the lack of educational and employment opportunities leading to reliance on marriage as a financial security, and fear of discovery of romantic relationships leading to a forced marriage to another person, are some of the factors that underlie such marriages.²³

For the purpose of classification, for self-initiated marriages the following facts were considered:

- Express reference by the victim girls or their families to a romantic relationship, elopement, or consensual marriage.
 - Cases in which the facts indicated the marriage was initiated by the victim and her partner, and was not arranged.
- **“Arranged/forced marriages”** encompass both forced and arranged marriages, where “arranged marriages” refer to cases where “[t]he bride and groom are selected by individuals other than the couple themselves, particularly by family members such as parents.”²⁴ UNICEF and UNFPA recognise that arranged marriages can also happen in a variety of contexts and “may be non-consensual or consent may be limited, pressured or forced.”²⁵ UNFPA defines forced marriage as “one in which one or both spouses do not give full, free, informed, prior consent, regardless of age.”²⁶ The causal link between poverty and development to arranged/forced child marriages is significant. Forced and arranged marriages “are generally driven by poverty, as well as by crises and shocks, and social norms that deem girls a ‘burden on` the household’”.²⁷

18 UNICEF & UNFPA, *Beyond Marriage and Motherhood: Empowering girls by addressing adolescent pregnancies, child marriages and early unions – Tailoring Programme Interventions for Southeast Asia and the Pacific* (UNICEF East Asia and Pacific Regional Office, Bangkok, 2022) vi.

19 *ibid.*

20 *ibid.* 3.

21 UNFPA-UNICEF, *The Global Programme to End Child Marriage, Phase III Program Document [2024 - 2030]* 104.

22 *ibid.*

23 Partners for Law in Development, *Why Girls Run Away to Marry - Adolescent Realities and Socio-Legal Responses in India*, [2019] 35.

24 [n 18] 47.

25 *ibid.*

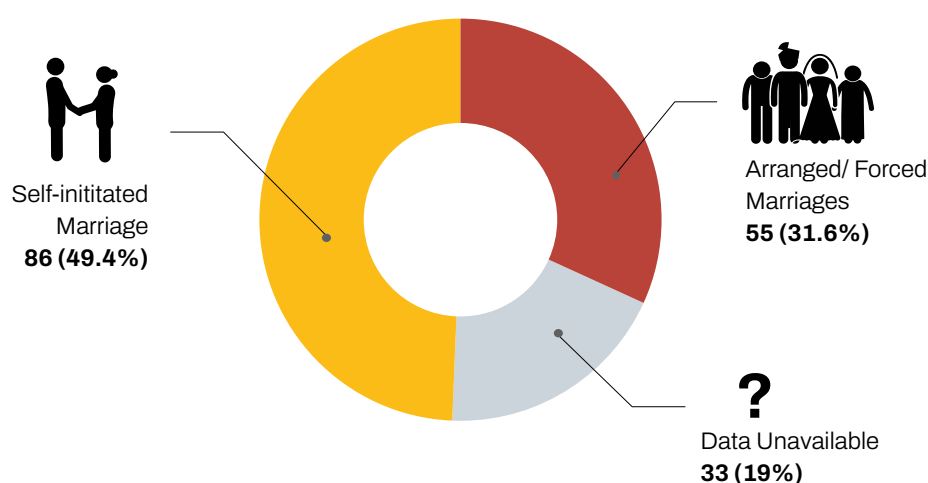
26 [n 21].

27 [n 18] 3.

For the purpose of classification, cases in which the victim girls expressly mentioned that they were forced or compelled to marry by their family, relatives, accused-husband, or any other person were placed in the category of arranged/forced marriage. Further, cases in which the facts indicated that the marriage was initiated by the family members or relatives, have been included in the category of arranged marriage.

- **Circumstantial marriages** are marriages resulting as “a response to premarital pregnancy and/or adolescent sexual activity. It is a means of protecting the girl’s and family’s reputation and may also be used to resolve pregnancies resulting from sexual violence.”²⁸ As the judgment data of the present dataset did not have sufficient information whether the marriage was performed in response to premarital pregnancy and/or adolescent sexual activity, the present report classifies the cases into two categories only: self-initiated marriage and arranged/forced marriage, and indicates the possibility of a circumstantial marriage where evident.

Nature of marriage in PCMA cases (n=174)



An application of the above definitions, revealed that **half of the marriages i.e., 86 cases (49.4%) were self-initiated marriages** and were typically characterised by elopements, or the victim leaving home (in 77 cases) to get married to the person of her choice. In 68 self-initiated marriages, there was an express reference to a pre-existing romantic relationship between the parties, i.e., in these cases, the victim, or her parents expressly admitted to the existence of a romantic relationship between the parties, or the court concluded that there was a romantic relationship. A study by Partners for Law in Development (PLD)²⁹ also found similar trends, with 54 of 83 (65.1%) child marriage cases in their dataset pertaining to elopements,³⁰ where “elopement” refers to “leaving home to marry without parental consent and typically in the face of parental opposition”.³¹ The findings aligns with Mehra’s observation that “[d]isrupting the homogeneity of global narratives [around child marriages], is the evidence of self-arranged marriages by under-age girls, carried out in defiance of traditional customary norms.”³²

In four cases of self-initiated marriages, the facts indicated the marriage being circumstantial as the family organised the marriage for the parties after the discovery of a “romantic” relationship between them or due to the victim becoming pregnant.³³

²⁸ *ibid.*

²⁹ Partners for Law in Development, *Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017* (2021).

³⁰ *ibid* 156.

³¹ *ibid* 19.

³² [n 23] 1.

³³ *State of Maharashtra v Rahul Sunil Thombe & Ors.*, Special Case No. 201/2021 decided by Court of Extra Joint District Judge & Additional Sessions Judge, Ahmednagar on 04.01.2023; *State of Maharashtra v Aakash Eknath Dhandare*, Spl. POCSO Case No. 24/2019 decided by Court of Sessions, Gadchiroli on 05.02.2022; *State of Tamil Nadu v Selva Vignesh*, Special Sessions Case No. 08/2019 decided by Court of the Special Court for Exclusive Trial of cases under the POCSO Act 2012, Sivagangai on 19.11.2020.

In 55 cases (31.6%), the child marriage was arranged/forced. These marriages were predominantly arranged by the victims' parents and other family members, and in some cases by the husband and his relatives, or an employer, landlady, etc. The lack of reference to the willingness or consent of the minor victim girl to family-arranged marriages makes it difficult to gauge the exact number of cases in which the marriages were performed against the will of the victim. *State of Maharashtra v Ashokkumar @ Sonu Ramashray Gaud and Ors*,³⁴ is an example of child marriage as a compromise after gangrape by two accused persons came to light when the 12-year-old victim became pregnant. The victim's father approached the police station where the accused persons were also present. When asked regarding what action was to be taken upon the complaint, the victim's father demanded that the victim be married to one of the accused persons, be given a hut, and the expenses and education of the unborn child be borne by the accused. In accordance with the terms of settlement, the victim's marriage was performed with one of the accused persons, and the deed of his house was handed over to the victim's father. However, the husband did not take care of the victim and left for Dubai leading to the victim's father approaching the police with the support of an NGO.

In 20 of the arranged/forced marriage cases, the victim expressly stated that she had been forced, coerced, or threatened to enter into the marriage. For instance, in *State of Maharashtra v Ganesh Bhaskar Sonawane*,³⁵ the victim alleged that her husband and in-laws along with their relatives forced her parents to perform her marriage despite their reluctance to do so as she was a minor. Pursuant to the wedding, the accused persons took her to their village and there she was subjected to forced sexual intercourse as well as physical abuse by her husband. She further alleged that her husband showed her pornography and demanded money from her father. She was not permitted to contact her parents. Upon her parent's refusal to give more money to her husband, her in-laws threatened to kill her. She also faced sexual harassment by her brother-in-law. When her parents refused to give further money, she was beaten, leading her to run away from her marital home and seek treatment at a hospital. At the hospital, her statement was taken and the accused persons were arrested.

Marriage Ceremonies in PCMA cases

In certain judgments from Tamil Nadu the accused-husband tied a "thali" or "yellow thread" around the victim's neck to marry her. In *State of Tamil Nadu v Lingeswaran*, the victim mentioned that the accused-husband tied a thali while they were travelling in a bus.³⁶ The Hindu Marriage Act, 1955 (HMA) does not expressly recognise the tying of the thali to be a valid marriage ceremony and instead states that a valid Hindu marriage may be solemnised "with the customary rites and ceremonies of either party".³⁷ The Tamil Nadu amendment to the HMA however expressly recognises that a marriage may be solemnised in the presence of relatives, friends or other persons by tying of the *thali*.³⁸ In *Ilavarasan v The Superintendent of Police and Ors.*,³⁹ the Supreme Court clarified that public declaration of the marriage under the Tamil Nadu amendment is not a requirement due to familial opposition and fear of safety for couples in many cases. It further noted that understanding public declaration, as a requirement under the section would narrow the 'wide import of the statute' and will also be violative of Article 21 of the Constitution.

³⁴ *State of Maharashtra v Ashokkumar @ Sonu Ramashray Gaud and Ors.*, POCSO Special Case No. 430 of 2014, decided by Special Judge under POCSO Act, Gr. Mumbai on 11.11.2021.

³⁵ Spl. POCSO Case. No. 32/2018, decided by Sessions Court, Barshi, Solapur on 15.12.2022.

³⁶ *State of Tamil Nadu v Lingeswaran*, Special Sessions Case No.109/2021 decided by Sessions Judge, Fast Track Mahila Court, Dindigul on 28.06.2022.

³⁷ Hindu Marriage Act, 1955, s 7(1).

³⁸ Hindu Marriage (Tamil Nadu Amendment) Act 1967, s 7A:

Special provision regarding suyamariyathai and seerthirutha marriages. - (1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthirutha marriage or by any other name, solemnized in the presence of relatives, friends or other persons -

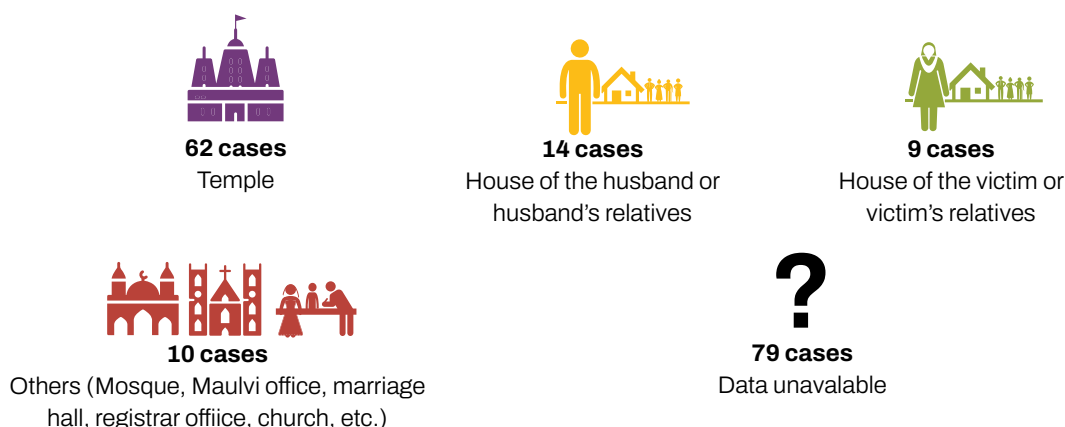
(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali.

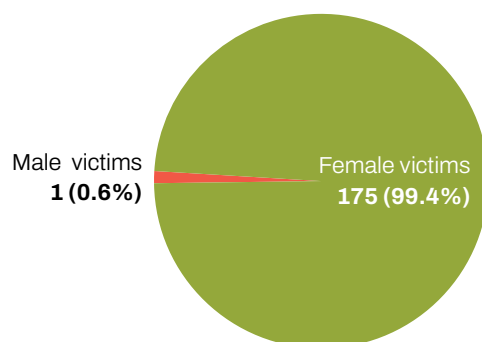
³⁹ Criminal Appeal No. 6534 of 2023, decided by the Supreme Court of India on 28.08.2023.

Place of Marriage in PCMA cases (n=174)

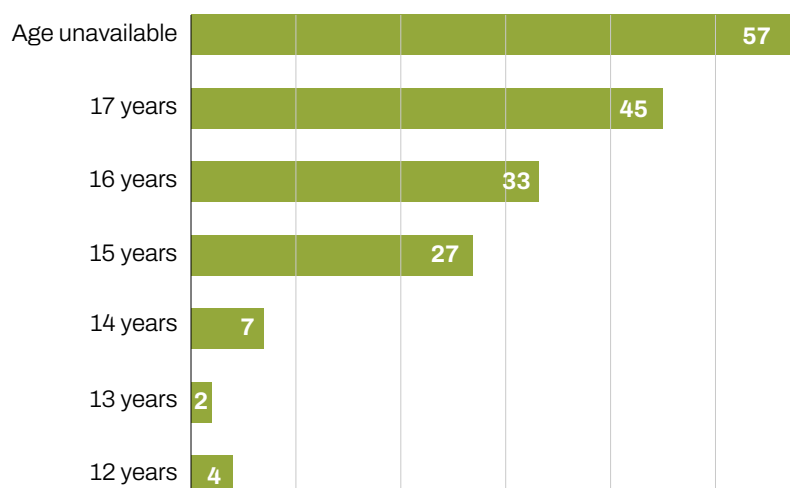


1.2. Profile of Parties in Child Marriages

Gender profile of the victims (n=176)



Age break-up of female victims (n=175)



Cases under the PCMA indicate the gendered phenomenon of child marriage, and this is evident as 175 of 176 victims⁴⁰ (99.4%) were female and only one was (0.6%) male.

The data points towards a trend of child marriages being more amongst older adolescents than younger children. Girls aged 16 to 17 years constituted 44.6% (78 victims) of total victims and those between 15 to 17 years were 60% (105 victims) of the total victims. The age of 57 victims (32.6%) was unavailable. In the context of prosecutions under PCMA, age of the victim is a significant fact that has to be established beyond reasonable doubt. The age data is based on the victim's age mentioned in the FIR or chargesheet, and this is contested during trial in many cases. Victims and parents may state a different age during evidence and courts may adjudicate that the victim was of a different age after considering the evidence. [Refer to Section 6 for more details on page no. 27.](#)

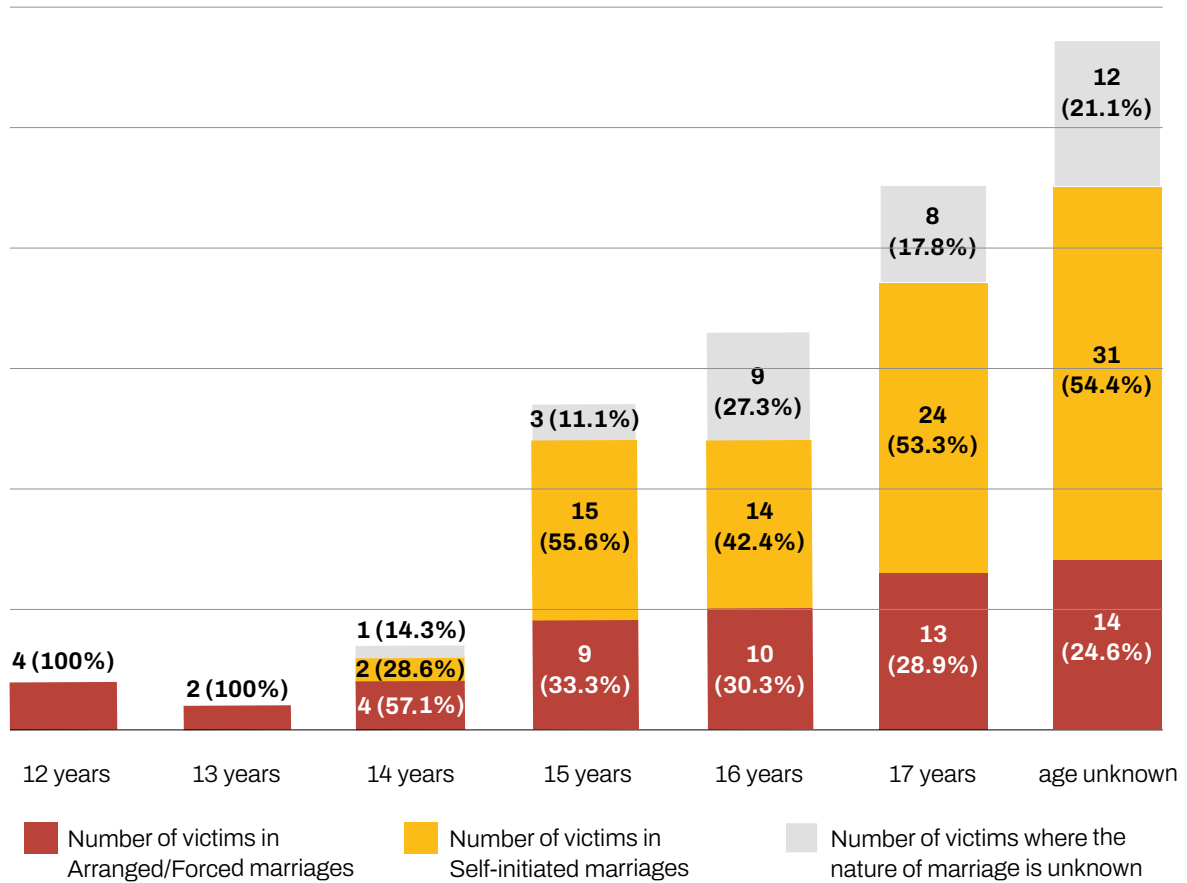
A similar trend was also observed in a study by PLD where in 55 of the 83 cases (66.3%), the child party was between 15 to 17 years.⁴¹ This also ties in with NFHS-5, as per which 23.3% of women aged 20 to 24 years were married before the age of 18 years, with only 4.8% married by or before the age of 15 years, indicating that a majority of child marriages took place when the girls were between 15 to 17 years.⁴²

⁴⁰ In two cases, there were two victims each - one male victim and one female victim in one case and two female victims in one case.

⁴¹ [n 29] 8. This was based on studying 83 cases (both civil and criminal) decided from India (56 decided by the High Courts and 27 by District Courts) between 2008 and 2017.

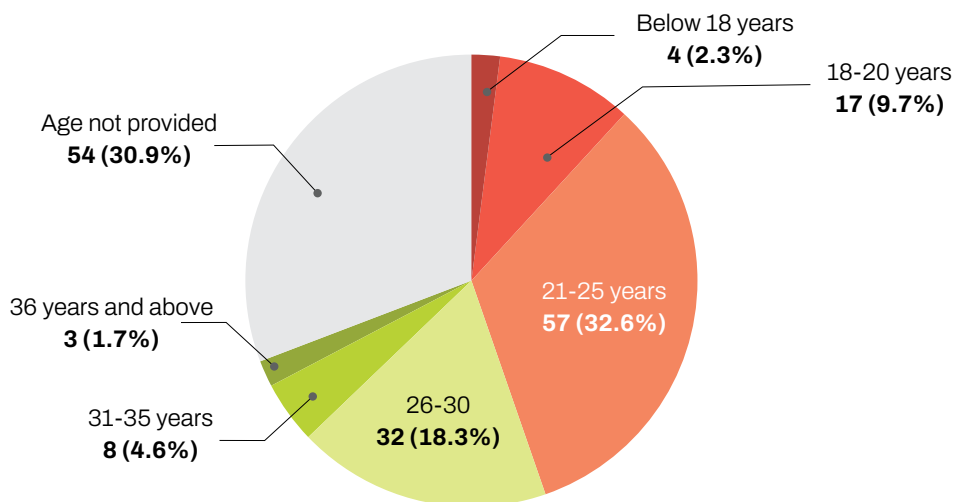
⁴² See Ministry of Health and Welfare, 'National Family Health Survey - 4 (2015-2016)' 165, Table 6.2 <<https://rchiips.org/nfhs/NFHS-4Reports/India.pdf>> accessed 5 June 2024.

Nature of marriage by age of victim as per FIR



Disaggregated data on the nature of the marriage by the victim’s age also sheds light on the increasing number of self-initiated marriages as children reach late adolescence. While arranged marriages constitute high proportions in respect of victims aged 12 to 14 years, after 15 years, the proportion of self-initiated marriages was much higher. For the age group of 15 to 17 years, 53 victims of 105 victims (50.5%) in that age group, were in self initiated marriages in contrast to 32 victims (30.5%) in arranged/forced marriages. **These figures underscore the link between adolescent sexuality and self-initiated marriage, emphasising the urgent need for direct and targeted interventions for adolescents.**

Age profile of the husband (n=175 husbands)



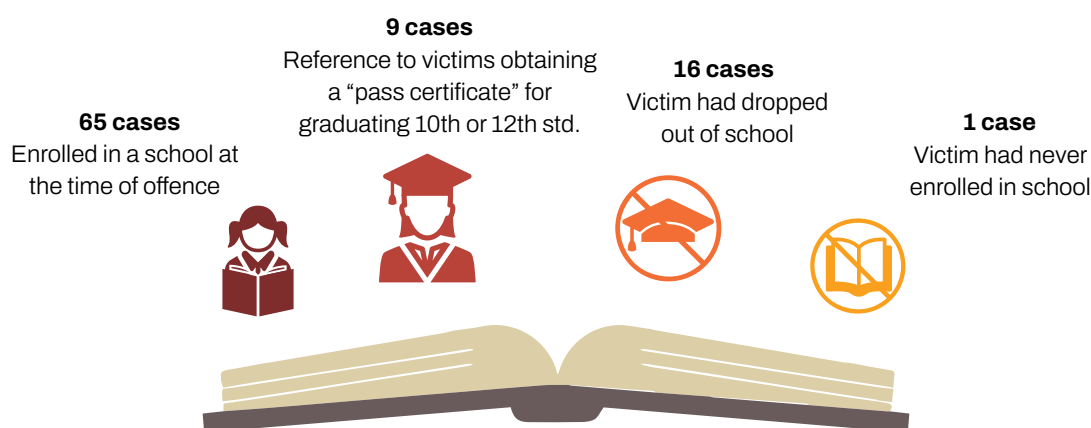
Of the 175 husbands in the 174 cases,⁴³ age-related data was available in respect of 121 husbands from Maharashtra (52), Tamil Nadu (64), and Assam (five). The age data was extracted primarily from the case title wherein the age of the accused was mentioned, or the text of the judgments. The possibility of the actual age at the time of the marriage being lower exists, as the age of the husband, where he was the accused, was based on the date of registration of the case in a majority of cases.

While appreciating the findings on age of the husband, it is pertinent to note that the age of marriage for men is higher than that for women and stands at 21 years. While men aged 18 to 21 years are deemed to be a “child” for the purposes of “child marriage”, they can at the same time be prosecuted for marrying a girl child below the age of 18 years.

A majority of the “husbands” i.e. 78 (44.6%) were below the age of 26 years, of whom 21 husbands were below the legal age of marriage i.e., 21 years of age.⁴⁴ The oldest husband was 42 years. The age was not known for 54 (30.9%) out of the 175⁴⁵ husbands of the victim girls.

Educational profile of victims in PCMA cases

The victim’s educational enrollment status was mentioned in 91 cases



Of the 91 cases where the educational status of the victims was available, 74 victims were either enrolled in or had passed grade 10 or 12, while 16 others had some interface with a school. The judgments do not indicate whether the victims continued their education after the case was lodged. This data does not explain the connection between child marriage and education but signals the need for qualitative studies about the push factors such as quality of the education system, poverty, inflation and economic pressures, imminent threat of a forced marriage, family approbation of a relationship, cultural beliefs, climate crisis, COVID-19,⁴⁶ among other structural factors, that may have led to victims being pushed out of school and into an early marriage.⁴⁷ It also emphasises the need for schools to be places where adolescents can access life skills education, comprehensive sexuality education, non-judgmental guidance on navigating personal relationships, and information about support services to combat forced or arranged child marriages.

⁴³ In one case there were two female victims resulting in two husbands in the case.

⁴⁴ *State of Assam v Md. Antaz Ali*, P.R.C Case No. 318/2019 decided by the Court of Additional Chief Judicial Magistrate, Kokrajhar on 23.09.2022; *State of Assam v Mukut Bhuyan*, GR Case No. 2496/2017 decided by Additional Chief Judicial Magistrate, Kamrup (Metro) on 29.11.2021 and *State of Assam v Md. Rahom Ali and Ors.*, GR Case No: 1145/2017 decided by the Court of Additional Chief Judicial Magistrate, Kokrajhar on 9.09.2019.

⁴⁵ Of the 174 cases, there were 175 minor girl victims.

⁴⁶ Shireen Jejheebhoy, *Child Marriages During the Pandemic*, [*The India Forum*, 14 June 2021] <<https://www.theindiaforum.in/article/child-marriages-during-pandemic>> accessed 4 June 2024. See also UNFPA-UNICEF, *The Global Programme to End Child Marriage, Phase III Program Document [2024 - 2030]* 11.

⁴⁷ Mary E. John, *Child Marriage in an International Frame: A Feminist Review from India* [2021] 158.

1.3. Impact of Child Marriage on Girls

Pregnancy, Childbirth and Abortions



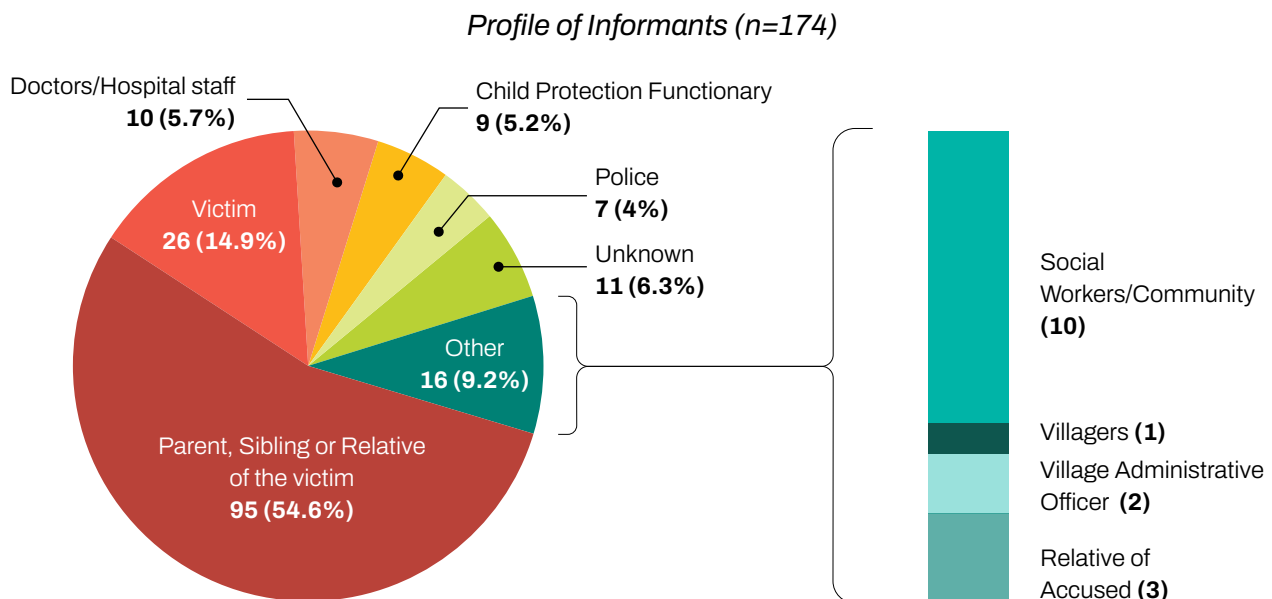
References to death of the victim, pregnancy, and domestic violence provided insight on the implications of marriage on the physical and mental health, and well-being of the girls. In five cases (2.9%) the female victim had died, of which in four cases the death took place after the FIR was lodged. In three cases the victim died by suicide.⁴⁸

Notably, in 15 cases, it was the pregnancy that led to the registration of the case and not the solemnisation of the child marriage. In nine of these 15 cases, the informant was the doctor/hospital staff where the victim sought medical treatment. For instance, in *State of Maharashtra v Vicky Yakub Buchade*,⁴⁹ the victim visited a hospital with her mother-in-law and husband after experiencing excessive bleeding. Due to the bleeding, the victim’s fetus was aborted to save her life. The doctor was informed by the victim that the accused is her maternal cousin/husband with whom she had a love marriage. The doctor verified the victim’s Aadhar card and found her underage and thereafter lodged a complaint to the police. The accused was charged under Sections 376(2)(n), IPC r/w Sections 3 and 4 of POCSO Act and Section 9, PCMA.

These findings underline the risks of early pregnancy associated with child marriage, and also a link between accessing reproductive health care and triggering the criminal justice system. They also signal towards low awareness about and use of birth control among adolescent girls and the need to intensify awareness related to sexual and reproductive health-related information and improve access to adolescent health clinics.

2. Who reported Child Marriages?

2.1 Profile of Informants



48 *State of Assam v Hazarat Ali Sheikh and Ors.*, G.R. Case No. 232/18 decided by the Court of Addl. Chief Judicial Magistrate, Kokrajhar on 20.12.2018 and *State v Dineshmathi*, Special Sessions Case No. 21 of 2018 decided by Special Court under POCSO Act, Nagapattinam on 22.04.2022 (Tamil Nadu).

49 Special POCSO Case No.116 of 2019 decided by Court of Addl. Sessions Judge, Kolhapur on 17.02.2022.

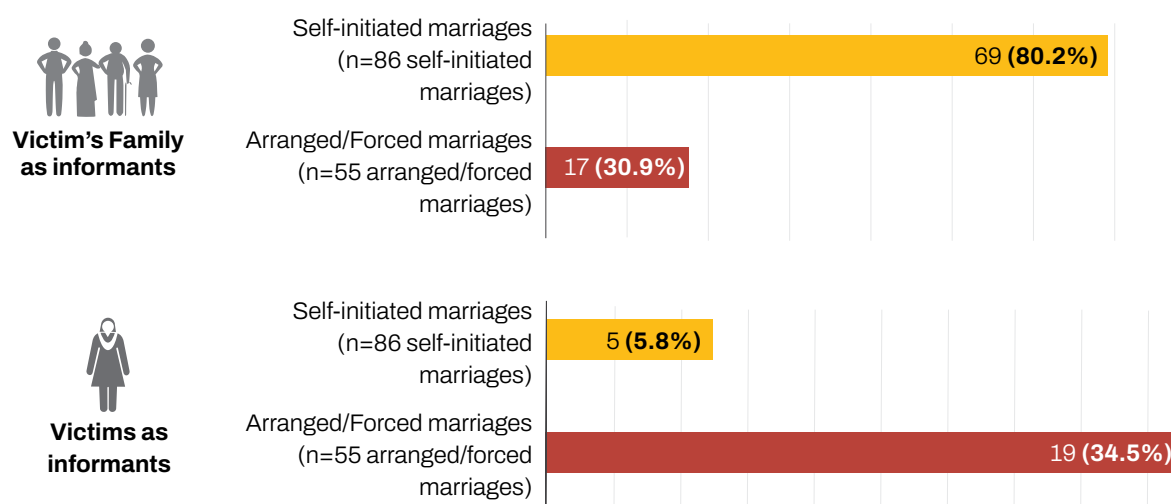
Informants in PCMA cases primarily constituted the victim's parents, sibling, and relatives in 95 cases (54.6%), followed by third-parties (persons other than the victim or her family) in nearly one-fourth cases i.e 42 cases (24.1%). These included functionaries such as the police (seven cases); child protection functionaries like the District Child Protection Unit (DCPU), Chairperson of the Commission for Protection of Child Rights (CPCR), Childline and Child Welfare Committee (CWC) (nine cases); doctors/hospital staff (10 cases); and others such as relatives of the husband, social workers, village level authorities, and villagers (16 cases). The victim herself was the informant in only 26 cases (14.9%).

Reference to Authorities and Functionaries

In 10 cases (5.7%), there was a mention of the Child Welfare Committee playing an active role in the case. 11 cases (6.3%) had a reference to Childline. Although the Child Marriage Prohibition Officer is a key functionary under the PCMA and is obligated to prevent solemnisation of child marriages,⁵⁰ there was no reference to them in the judgments.

2.2 Circumstances leading to the reporting of cases

The judgments revealed the complex background in which PCMA cases enter the criminal justice system. Factors such as elopements, forced marriages, pregnancy, domestic violence, and family disputes, led the informants to set the criminal law into motion. **In only 55 of the 174 cases (31.6%) were the complaints filed because of a child marriage taking place.**



Victim's family as informants

The victim's family predominantly filed complaints in self-initiated marriages, i.e., in 69 of the 86 self-initiated marriage cases (80.2%). In contrast, the victim's family reported the matter to the police in only 17 out of 55 cases (30.9%) of arranged/forced marriages.

In self-initiated marriages, complaints were predominantly filed as a missing complaint after the family realised that the victim was not at home, or had not returned from school, market or the workplace. In some cases, families added that they suspected the girl to have been kidnapped or lured by the husband for the purposes of marriage. These findings are in line with the PLD study⁵¹ which also indicated that the PCMA was being used by parents of adolescent girls to regulate their expressions of choice, and legal actions being triggered by elopements.⁵²

50 PCMA, s19(3)(a).

51 [n 29] 56.

52 *ibid.*

The irony is exemplified by a case⁵³ in which the victim's family had forcibly married her to her maternal uncle. Her father promptly filed a missing complaint when she exercised her agency by eloping with her boyfriend fearing that she would be sent back to her husband. By lodging a missing complaint, they attempted to assert control over her life choices while conveniently disregarding their own illegal actions in forcing her into marriage. Subsequently, her parents and husband were charged under the PCMA, and her boyfriend was charged under IPC and POCSO Act. **This calls for reflection on whether laws can effectively protect, empower, and afford meaningful choices to girls who wish to exit or avoid a forced marriage.**

In cases of arranged/forced marriages, families filed complaints after they discovered that the victim was given in child marriage by another family member or forced into marriage by the husband or other persons. For instance, in *State of Assam v Salam Sheikh @ Salamuddin & Ors.*,⁵⁴ the victim's mother filed a case after she discovered that the victim's father, from whom she had separated, had solemnised their minor daughter's marriage. In *State of Maharashtra v Shivaji S/o Banshi Khiste*,⁵⁵ the victim's aunt filed a police complaint alleging that her minor niece was being married off by her family. Complaints were also filed after the victim revealed that she was forcefully kidnapped or threatened into a marriage by the husband and his family. Other reasons included grievances such as violence and ill-treatment of the victim by her husband and in-laws, and abandonment of the victim by her husband. In these cases, families did not raise the issue of child marriage, but approached the police to seek redress for the violence arising within the marriage. The addition of charges under PCMA may have been unintended by the informants.

Victims as informants

Victims were the informants in 26 cases. Victims filed cases predominantly in arranged/forced marriages (19 cases) and were the informants in only five of the self-initiated cases. In two cases, the nature of marriage was unclear.

Multiple reasons contributed to the filing of cases by victims, such as sexual assault by the husband (13 cases), domestic violence by husband and/or in-laws (five cases), and wanting a way out of the forced marriage (five cases).⁵⁶ Other reasons included disputes and quarrels with husband and/or in-laws, being abandoned or thrown out of the matrimonial home, ill-treatment by in-laws, and sexual harassment by the separated husband. For instance, in *State of Maharashtra v Karimon Bayjit Shaikh*, the victim filed a complaint after she was sold by husband and in-laws into prostitution.⁵⁷

In self-initiated marriages, victims filed cases due to concerns such as domestic violence, forced sex, being thrown out of the matrimonial home, and disagreement about abortion. In one case,⁵⁸ the victim inadvertently became the informant when an ASHA worker suspected her to be pregnant. Here the 17-year-old victim fell in love with the accused person and developed a sexual relationship with him. She eventually missed her menstrual cycle but was told by a doctor that she was not pregnant. Upon suspecting her to be pregnant, an ASHA worker took her to a hospital where it was revealed that she was eight months pregnant leading to her statement being recorded and an FIR was lodged. Two days later, she got married to her boyfriend, leading to additional charges under the POCSO Act, IPC, and PCMA against the husband.

53 *State of Tamil Nadu v Sankar*, Spl.S.C. No.26/2021 decided by Sessions Judge, Special Court under POCSO Act, Nagapattinam on 23.04.2022.

54 *State of Assam v Salam Sheikh @ Salamuddin & Ors.*, Special (POCSO) Case No. 13 of 2021 decided by the Court of Special Judge, Chirang, Kajalgaon on 16.11.2022.

55 *State of Maharashtra v Shivaji S/o Banshi Khiste*, SCC No. 1207/2017 decided by the Court of Judicial Magistrate First Class, Court No. 6 Parbhani on 20.02.2018.

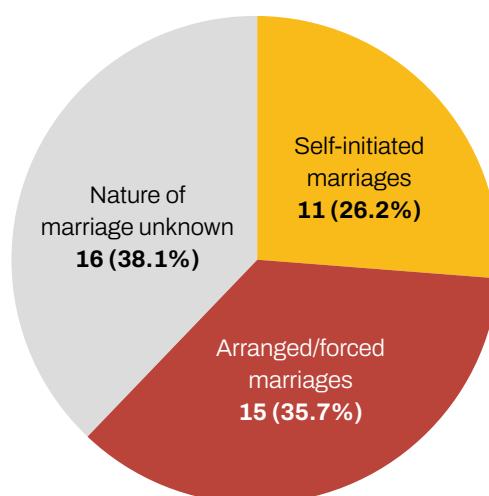
56 Note that this list is non-exhaustive and in some cases more than one reason was cited for filing a case.

57 *State of Maharashtra v Karimon Bayjit Shaikh*, Special Case (POCSO) No. 199 Of 2016 decided by the Court of Sessions, Thane on 19.12.2018.

58 *State of Maharashtra v [name retracted]*, POCSO C. No. 155/2020 decided by the District and Sessions Court, Wardha on 6.09.2022.

Third-party informants

Break up of cases in which third parties were informants by nature of marriage (n=42)



Cases were filed by third parties, i.e., persons other than the victim or her family in 42 cases (24.1%). Third parties filed cases against both arranged/forced child marriage, as well as self-initiated marriages. These cases were often characterised by social workers, or child protection functionaries filing complaints after discovering the occurrence of child marriage. For instance, in *State of Assam v Pradip Bhattacharjee and Ors*,⁵⁹ the Chairperson of the CWC was the informant and alleged that the 15-year-old minor victim was being married off to the accused in a temple and “the said marriage was performed by the President and Secretary of the Temple Committee without verifying the proper age of the victim girl.” The case was registered against the husband, victim’s mother and the President and Secretary of the Temple Committee and they were charged under Sections 9 and 10, PCMA.

Detection of under-age pregnancies led to the reporting in 10 cases. For instance, in *State of Maharashtra v Sumer Chandpasha Shaikh*,⁶⁰ a Police Sub-Inspector lodged a police report upon receiving information from a hospital regarding the admission of a minor girl for delivery. Upon enquiry the victim girl stated that her maternal aunt arranged for her marriage with a person. After her marriage, she became pregnant and was later admitted at the hospital for delivery. At the hospital she disclosed that her age was 16 years leading to the police being informed.

Doctors or hospital staff were the informants in 10 cases, prompted by pregnancy (nine cases) and suicide (one case),⁶¹ and may have possibly reported due to the mandatory reporting obligation under the POCSO Act. Charges under the PCMA were added after the child marriage came to light. For instance, in *State of Maharashtra v Rafiq Chand Nadaf*,⁶² the victim was admitted in the hospital for labour pain and delivery. Upon being asked by the doctor, the victim revealed that she was 17-years-old and was married. The doctor upon learning this lodged a police report and her husband was charged under Section 9, PCMA, Section 376, IPC, and Sections 4 and 6, POCSO Act.

In three cases, the relatives of the accused person filed a complaint prompted by family disputes. For instance, in *State of Tamil Nadu v Elayaperumal and Ors*,⁶³ the brother of the victim’s husband reported the child marriage after a dispute over the family house. However, the informant inadvertently incriminated himself and was accused of participating in the child marriage and charged under Section 10, PCMA.

59 G.R. Case No: 228/16 decided by the Court of Additional Chief Judicial Magistrate, Kokrajhar on 07.12.2018.

60 Special Case (Child Protection) No.19/2022 decided by the Court of Special Judge under POCSO Act, Majalgaon on 16.11.2022.

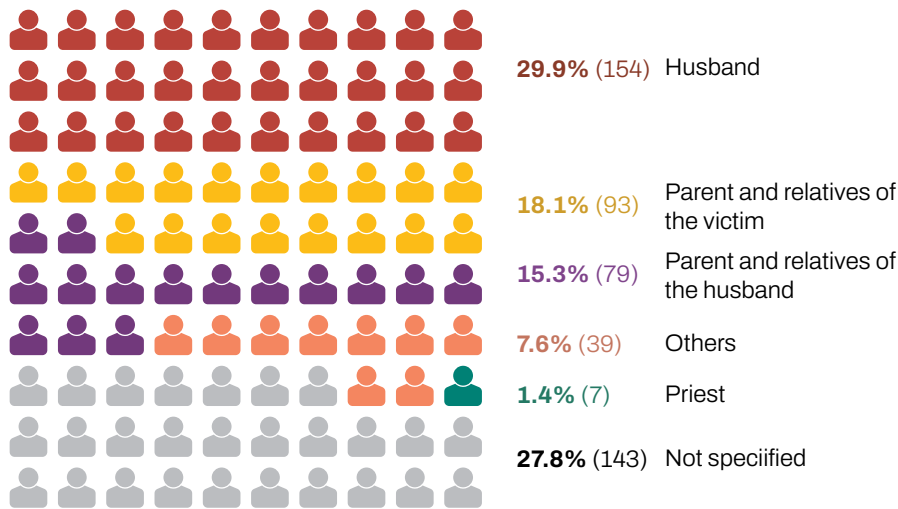
61 *State of Tamil Nadu v Dineshmathi*, Special Sessions Case No. 21 of 2018 decided by Special Court under POCSO Act, Nagapattinam on 22.04.2022.

62 Special Case No. 100/2019 decided by the Court of Additional Sessions Judge at Solapur on 05.08.2022.

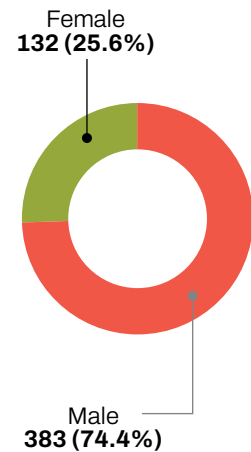
63 *State of Tamil Nadu v Elayaperumal and Ors.*, Special Sessions Case No: 43/2018, decided by the Court of Sessions Judge, Fast Track Mahila Court, Ariyalur on 27.11.2020.

3. Who was charged under PCMA?

Profile of accused persons in PCMA cases



Gender profile of accused persons in PCMA cases

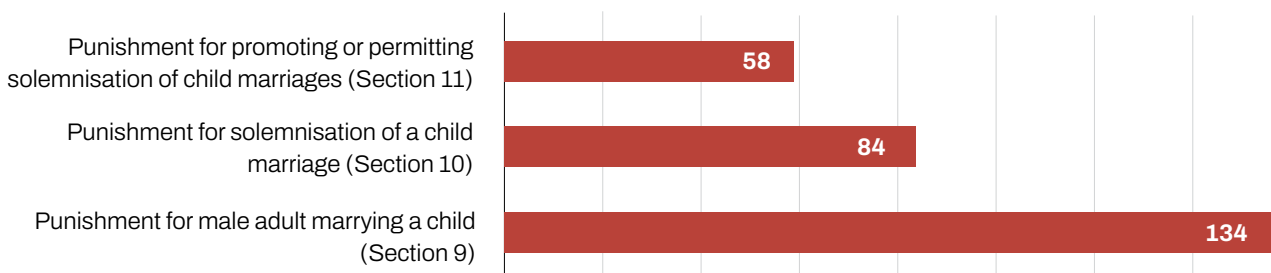


There were a total of 515 accused persons in the 174 cases. On an average, each case had three accused persons. 383 accused persons (74.4%) were male and only a quarter i.e. 132 (25.6%) were female. Male accused persons were predominantly the victim’s husband followed by the father or male relatives of the victim or the husband who organised or abetted the commission of the alleged child marriage. Female accused persons were primarily the victim’s mother, victim’s mother-in-law and other female relatives of the victim or the husband.

The information on the victim’s relationship with the accused was available for 372 accused persons. Nearly a third of all accused persons, i.e. 154 persons (29.9%) were the husbands. 172 (33.4%) accused persons were parents and relatives of the victim and the husband. 39 accused persons (7.6%) constituted external entities like villagers, acquaintances, husband’s friends, neighbours, etc. A total of seven priests were named as an accused person for solemnising a child marriage in contravention of Sections 10 and 11, PCMA.

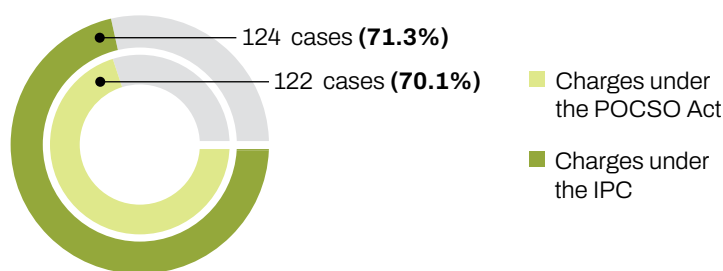
4. Nature of Charges and Interplay with POCSO Act

Primary charges under PCMA

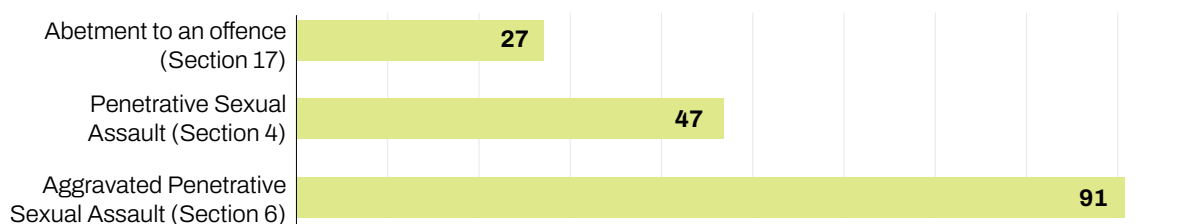


The accused persons were primarily charged under Section 9 (Punishment for male adult marrying a child), Section 10 (Punishment for solemnising a child marriage), and Section 11 (Punishment for promoting or permitting solemnisation of child marriages) of the PCMA. In addition to the PCMA, the accused persons were also charged under the IPC and POCSO Act.

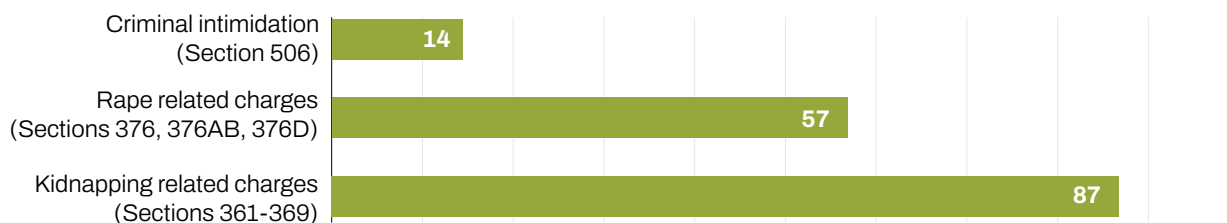
Charges under IPC and POCSO Act in PCMA cases



Prominent charges under POCSO in PCMA cases



Prominent charges under IPC in PCMA cases



In 122 of 174 (70.1%) cases, the accused were charged under the POCSO Act, of which in 91 cases, they were charged under aggravated penetrative sexual assault. The aggravated charge was possibly added because of the victim's pregnancy, repeated penetrative acts, and penetrative sexual assault by a person related to the child through marriage.

In 124 cases (71.3%), the accused faced charges under the IPC in addition to PCMA, predominantly under kidnapping related provisions such as Sections 363, 365, 366, 366A, and 368 (87 cases) and rape related provisions such as Sections 376, and 376D (57 cases). Kidnapping charges were found in 67 of the 86 (77.9%) self-initiated marriages. The use of child marriage as a means for trafficking or trafficking for the purpose of marriage was not significant in this sample, and was found in five cases, of which in four cases the accused was charged under Section 370, IPC and in two cases under the Immoral Traffic (Prevention) Act, 1956 (ITPA).⁶⁴

In seven cases, charges were filed under other Acts with two cases each under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act), Information Technology Act, 2000 (IT Act), and ITPA; one case each under the Juvenile Justice (Care and Protection of Children) Act, 2000 (now repealed), Dowry Prohibition Act, 1961, Tamil Nadu Prohibition of Harassment of Women Act, 1998, Epidemic Diseases Act, 1897, and Disaster Management Act, 2005.

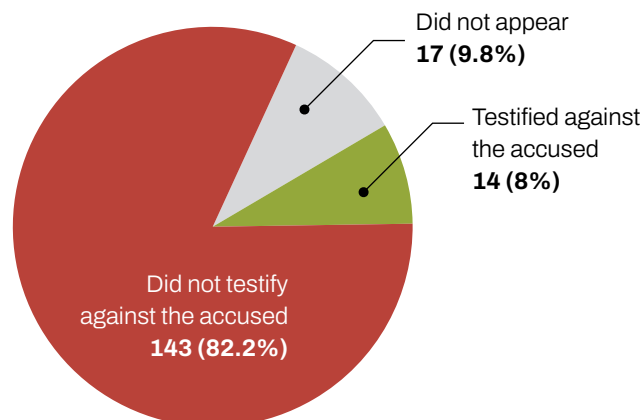
⁶⁴ In one case, charges under both Section 370, IPC and the ITPA were added.

Child Marriage during COVID-lockdown

In *State of Maharashtra v Manisha Narayan Udage*,⁶⁵ charges under Epidemic Diseases Act, 1897 and Disaster Management Act, 2005 were also applied as the marriage took place during COVID. The 12-year-old victim alleged that her uncle organised her engagement on the pretext of asking her to perform a prayer in the memory of her father, who had died. She performed a religious ceremony as directed by her uncle, and later learnt that it was an engagement ceremony. The accused persons performed her haldi ceremony and her marriage when she was 12 years old. The husband raped her after some days and thereafter, the victim filed an FIR. The accused persons were charged under Section 376(2)(i), IPC, Sections 9, 10, 11 of the PCMA, and Section 4, POCSO Act. Charges were also framed under Sections 2, 3, 4 of Epidemic Diseases Act, 1897 and Section 51(b) of Disaster Management Act, 2005 due to lockdown restriction because of COVID at the time. A reference was also made to the “Section 11 of COVID Act, 2020”,⁶⁶ which is presumably Regulation 11, Maharashtra COVID-19 Regulations, 2020. As the victim and her mother turned hostile and due to absence of any proof of marriage, the accused persons were acquitted.

5. Nature of Victims’ Testimony

Nature of victim testimony (n=174 cases)



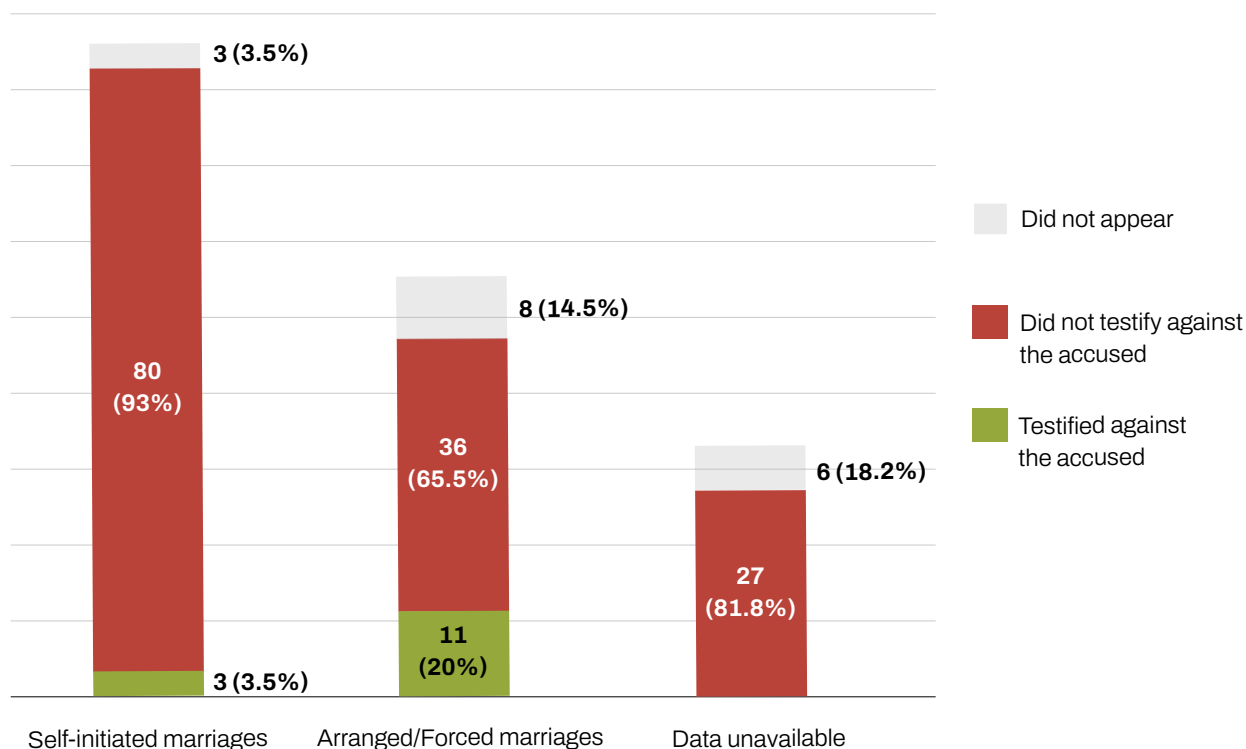
The victims’ testimony is central to a criminal trial and in cases under the PCMA, it was seen that victims did not incriminate the accused persons in majority of the cases i.e., 143 cases (82.2%). They testified against the accused in only 14 cases (8%), of which in 11 cases the marriage was arranged/forced and in three cases it was self-initiated. Even in cases where the victim was the informant (26 cases), she testified in only four cases. The victim was expressly declared hostile in 67 cases (38.5%).

⁶⁵ Special Case No.719 of 2020 decided by Addl. Sessions Judge, Ahmednagar on 15.10.2022.

⁶⁶ The Court wrongly mentioned COVID Act, 2020 instead of the Maharashtra COVID-19 Regulations, 2020.

Regulation 11 of the Regulations states: Any person/Institution/Organization found violating any provisions of these Regulations shall be deemed to have committed an offence punishable under Section 188 of Indian Penal Code (45 of 1860). Empowered officers may penalize any person/institution/organization found violating provisions of these Regulations or any further orders issued by Government under these Regulations. See ‘Maharashtra COVID-19 Regulations, 2020’ <<https://arogya.maharashtra.gov.in/pdf/30.pdf>> accessed 5 June 2024.

Nature of victim testimony vis-à-vis nature of marriage



These trends highlight the social complexities involved in PCMA cases, as incriminating the accused could lead to imprisonment of individuals closely related to the victim, such as their parents, husband, or in-laws and disrupt family relations and the marriage, and impact their social status. For instance, in *State of Maharashtra v Bapu Yeshwantrao Jagtap*,⁶⁷ the 15-year-old victim had lodged the FIR alleging that her parents forcefully married her to the 28-year-old accused despite her expressing several times that she did not want to marry him. She further alleged that he would consume liquor and abuse her physically and sexually. However, she denied the contents of the complaint in court, stated that the marriage was performed with her consent, that she was an adult at the time of the marriage, and further that her husband had not raped her. The court took into consideration the relationship between her and the accused persons, noting that they were her parents and husband. It observed,

“At that time she was not willing to cohabit with her husband. But subsequently, much water [sic] flown and the victim went to stay with her husband and cohabiting with him. Her husband, father and mother are charge sheeted. So now she is not willing to depose against them. So these circumstances are required to be considered while appreciating her evidence”

The court found the husband and victim’s parents guilty of offences under the PCMA. In respect of sexual offences, the medical evidence found no external injuries and only reported an old tear in the hymen. The court relied upon the complaint of the victim, applied the presumption under Section 29, POCSO Act and found the husband guilty under Section 376(2), IPC, and Sections 4, 6, and 8, POCSO Act. The victim’s parents were convicted under Section 10, PCMA.

In *State of Maharashtra v Rahul Kalyan Bongane and Ors.*,⁶⁸ the victim got acquainted with the accused on Facebook and married him. She found out about the existence of his first marriage after she moved in with him, and the complaint was lodged after she learnt that his first wife was pregnant. During the pendency of the case, she married another person. She stated that although the allegations were true, she “deposed falsely” to save the accused persons as she feared that they would inform her current husband about the incident and affect her matrimonial life. The accused were acquitted.

67 Spl. Case (POCSO) No.199/2019 decided by the Court of the Special Judge (POCSO Act), Aurangabad on 26.07.2022.

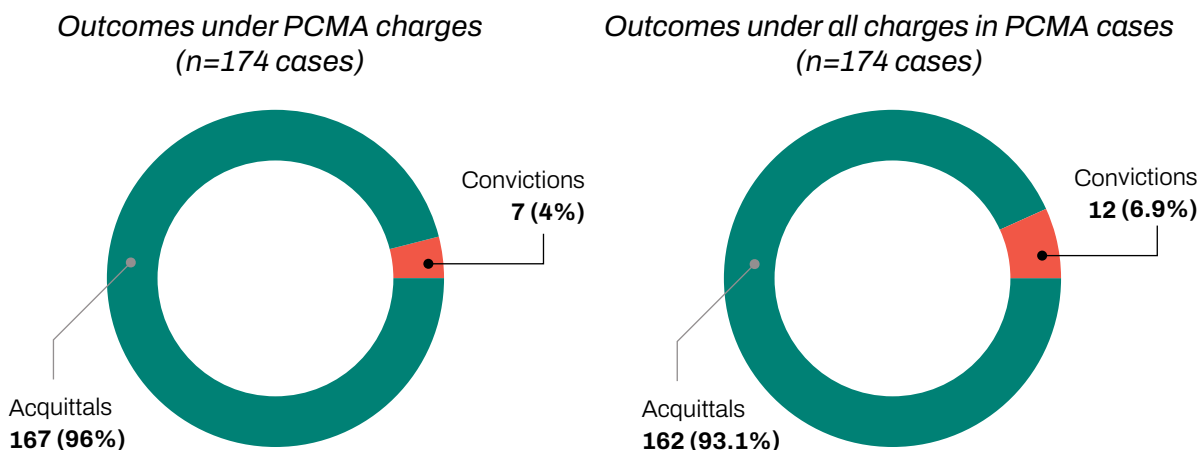
68 Spl. Case (Child Prot.) No. 30/2019 decided by Special Judge (POCSO Act), Aurangabad on 27.06.2022.

The need for protection and support in complex cases involving forced child marriage and sexual offences is made out from the case of *State of Maharashtra v Raju Murlidhar Chavan*,⁶⁹ where the President and Member of the Child Marriage Restraint Committee at Akole along with the Executive Chairman of the Maharashtra Eradication of Superstition Committee approached the police upon learning about the marriage and sexual exploitation of a 13-year-old minor. Upon inquiry, the victim stated that her grandmother performed her marriage with God Khandoba during her childhood. Her godparents were two religious persons for whom she started performing certain religious rituals on a daily basis, from which she earned an income. She was subsequently given in marriage with a man who established a sexual relationship with her and she became pregnant and delivered a child. Later, her godparents instigated her husband to abandon her. As the husband was absconding, charges came to be filed only against her grandmother and her godparents under Section 11, PCMA and Section 17 read with Section 6, POCSO Act. The victim reiterated the same allegations in her statement recorded before the Magistrate under Section 164 of the CrPC as well as during her chief-examination. However, during cross-examination, she resiled from her earlier statements and stated that no one performed her marriage and further stated that she became pregnant as an unknown person raped her. All the informants as well as one neighbour testified against the accused. The court found the victim's evidence unreliable and noted that her statement under Section 164, CrPC was not substantive evidence but only corroborative in nature. The court deemed the evidence of all other witnesses as hear-say. The prosecution also failed to establish her minority due to its failure to produce an original copy (as opposed to a photocopy) of school documents, and her birth certificate. The court also noted that the Investigating Officer (IO) had failed to send the victim for medical examination although a sexual offence was alleged. The accused persons were hence acquitted.

In an overwhelming majority of self-initiated cases, i.e., in 80 of the 86 cases (93%), the victim did not incriminate the accused. Testimonies revealed that they did not identify as a 'victim', particularly when the complaint was lodged by a family member. They insisted the marriage or relationship was consensual and often claimed they were not a "child", asserting they were adults at the time of marriage. This stance undermined the prosecution's case of a "child" marriage.

6. Outcomes and Factors Affecting Outcomes

6.1. Overview



A vast majority of PCMA cases, i.e, 167 cases (96%) resulted in an acquittal, and convictions were recorded in only seven cases (4%). In five cases, convictions were recorded under other statutes such as the POCSO Act, SC/ST Act and the IPC, but not the PCMA as the prosecution failed to establish the performance of a child marriage or the minority of the child. For example, in *State of Maharashtra v Sanjay Virendrakumar Agrawal & Ors*,⁷⁰ the court convicted the accused persons for wrongful confinement (under Section 344, IPC) and for attempt to murder (Section 307), but acquitted them under PCMA as the minority of the victim was not established.

69 Sessions Case No.19/2015 decided by the Court of Additional Sessions Judge, Sangamner, Ahmednagar on 29.06.2016.

70 *State of Maharashtra v Sanjay Virendrakumar Agrawal & Ors*, Spl. Case Child Prot. No. 41/2016 decided by the Court of Additional Sessions Judge-11, Aurangabad on 20.04.2019.

Details of Convictions			
Total No. of convictions under different statutes	Break up of convictions	Number of cases with conviction under the provision	Number of persons convicted
Convictions under the PCMA			
7 cases	Section 9 (Punishment for male adult marrying a child)	6	6
	Section 10 (Punishment for solemnising a child marriage)	5	17
	Section 11 (Punishment for promoting or permitting solemnisation of child marriages)	3	7
Convictions under the IPC			
9 cases	Section 109 r/w section 34 (Section 109 - Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment; Section 34 - Acts done by several persons in furtherance of common intention)	1	5
	Section 307 (Attempt to murder)	1	5
	Section 344 (Wrongful confinement for ten or more days)	1	5
	Section 363 (Punishment for kidnapping)	2	3
	Section 366 (Kidnapping, abducting or inducing a woman to compel her marriage, etc.)	3	4
	Section 366A (Procurator of minor girl)	1	1
	Section 376 (Punishment for rape)	2	2
	Section 376(2) (Aggravated rape)	3	10
	Section 417 (Punishment for cheating)	1	1
Convictions under the POCSO Act			
8 cases	Section 4 (Punishment for penetrative sexual assault)	3	3
	Section 6 (Punishment for aggravated penetrative sexual assault)	6	7
	Section 8 (Punishment for sexual assault)	1	1
	Section 17 (Punishment for abetment)	1	2
Conviction under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989			
1 case	Section 3 (1)(xii) (being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed)	1	1
* Convictions were recorded in 12 cases against 26 persons. Some cases had convictions for multiple offences.			

In six out of the seven convictions, the marriage was arranged/forced, of which in four cases there was an express reference to the marriage being forced. In the *State of Assam v Fatema Bibi & Ors.*,⁷¹ the victim lodged an FIR against her mother and father-in-law for marrying her forcefully to the accused husband.

⁷¹ Case No. GR 317/2017 decided by the Court of Judicial Magistrate First Class, Nalbari on 16.08.2018.

She also alleged that the accused husband was physically violent to her. The victim further alleged that when she tried returning to her natal home, her mother once again forced her to return to her matrimonial home and even threatened to kill her by pouring kerosene over her. The victim mentioned that she had taken steps to die by suicide, but a person intervened and took her to the police station to file a complaint instead. The victim testified against her mother, husband and father-in-law. The victim's father, another prosecution witness, initially testified that the victim was forcefully married and returned to her home as her husband claimed that she was possessed by a demon. But, in his cross-examination, he stated that the victim consented to the marriage and that he had been under the impression that she had crossed the age of majority at that time. The victim was held to be a minor on the basis of matriculation certificate. The accused persons were convicted under Section 9 and 10, PCMA.

Conviction was recorded in one case of a self-initiated marriage. In *State of Maharashtra v Juber Shaikh Naim Shaikh*,⁷² the 16-year-old victim's father lodged an FIR after she went missing. The victim was found with the accused, and refused to return with her parents leading her to be placed in a shelter home. The prosecution alleged that the accused persons (husband, father-in-law and mother-in-law) performed the victim's marriage with the accused and falsified her Aadhaar card. While initially the victim refused medical examination, she later agreed and provided history of sexual acts with the accused. She did not incriminate the accused during her examination-in-chief and denied having physical relations with him. She was declared hostile. In her cross-examination by the prosecution, she stated that since her parents were arranging her marriage against her will, she left home with the accused whom she had known for some time. She also admitted to having sexual intercourse with him. This was also corroborated by the doctor's testimony as the victim had told the doctor she was a minor, she did not have much awareness about "good and bad", and the accused persons took advantage of her and prepared the Nikahnama on the basis of a false Aadhaar card. As per the medical evidence, there were signs of use of force (nail and teeth marks) and sexual intercourse could not be ruled out. The defence argued that the Muslim Personal Law (Shariat) Application Act, 1937 permits a girl to marry after attainment of puberty. The Court, however, dismissed this argument by relying on a Karnataka High Court judgment⁷³ which held that PCMA would override Muslim personal law. On the basis of the medical evidence, and evidence of the prosecution witnesses, the accused husband was convicted under Section 9, PCMA; Sections 363, 366A, 376(2), IPC; and Section 4, POCSO Act. His parents were convicted under Section 10, PCMA.

6.2. Factors impacting Outcomes

A number of factors affected outcomes in PCMA cases such as the nature of victim testimony, age determination of the victim, evidence on solemnisation of marriage, and availability of other evidence. Victim's testimony and age determination were the most critical factors. Courts appeared to accord high evidentiary value to the victim's testimony, and successful establishment of the minority of the victim.

A conviction under PCMA was more likely where all the factors above were present, i.e., where the victim testified against the accused, victim's minority was established, and there was documentary evidence as to the solemnisation of the child marriage. For instance, in *State of Maharashtra v Vinayak Ganesh @ Mukesh Kamble*,⁷⁴ the FIR was filed by the police after receiving a letter from CWC regarding the solemnisation of a child marriage. The 15-year-old victim alleged that her father had sold her to her maternal uncle to pay off a debt and she was later forced to marry her uncle's son. Her husband, who was also her cousin, raped her on several instances. She shared her ordeal with her mother who informed the Women Assistance Cell. A Social Worker at the Cell sent her to CWC. On the basis of birth certificate, ossification test and failure of the defence to rebut the prosecution evidence, the Court held that the victim was a minor. The victim testified against the accused persons. Further, the fact of the marriage was proved due to documentary evidence such as wedding photographs, DVD, and victim's testimony. The Court convicted the victim's parents and her in-laws under Section 10, 11, PCMA and her husband under Section 9, PCMA. The husband was acquitted of charges under Section 376(2)(i)(n), IPC and Section 6, POCSO Act based on Exception 2 to Section 375, IPC despite the fact that the POCSO Act is the overriding law in respect

⁷² Spl. Case (POCSO) No. 196/2020, decided by the Court of the Special Judge (POCSO Act), Aurangabad on 5.07.2022.

⁷³ *Seema Begum v State of Karnataka and Ors.*, Writ Petition No.75889 of 2013 decided by the High Court of Karnataka on 26.02.2013.

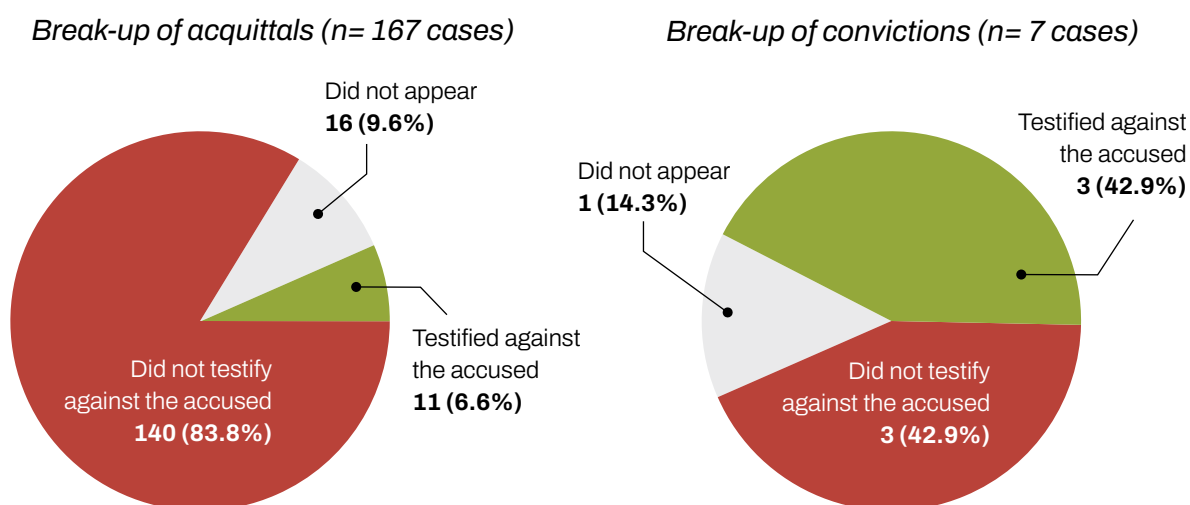
⁷⁴ POCSO Case No.466 of 2016 decided by the Special Court for POCSO Act, 2012, Fort Greater Bombay on 16.05.2018.

of sexual offences against children. The court was of the view that the decision of the Supreme Court in *Independent Thought v Union of India and Anr.*,⁷⁵ would have a prospective effect and since this case was registered and chargesheeted in 2016, it would not apply.

Acquittals took place largely because the victim did not incriminate the accused, the prosecution was not able to establish her age, there was lack of evidence on the solemnisation of a marriage, and/or the courts considered the consensual nature of the relationship. For instance, in *State of Maharashtra v Salman Mumtaz Sayyad*,⁷⁶ the 17-year-old victim's father filed a police complaint after she did not return from college and the family discovered that she had not attended college that day. The police traced her and she stated that she had a love affair with the accused whom she had known since childhood, and had eloped with him after her parents discovered the affair. She stated that they had not had any physical relationship. In her testimony, the victim reiterated that she voluntarily eloped and that the accused had not kidnapped her. The prosecution was unable to establish that she was a minor. The court acquitted the accused under Sections 363 and 366B r/w 34, IPC Sections 3 and 4, CMRA and under Sections 4 and 8, POCSO Act observing,

“... it is abundantly clear that victim was having love affair with accused No.1. She was matured enough to understand implications of her act. From the testimony of PW1, it is very clear that she voluntarily eloped with accused No.1 as her family members came to know about her love affair with accused No.1. The evidence of victim clearly shows that she was in love with accused No.1. she has roamed with accused No.1 at various places, but she never raised any alarm against accused No.1 and she did not make any attempt to rescue herself from his clutches. This itself show that with her own sweet will, she joined the company of accused No.1.”

Outcomes vis-à-vis victim's testimony



As courts accorded high value to the testimony of the victim in comparison to other forms of evidence, acquittals took place principally because the victims did not incriminate the accused in 140 cases. Acquittals also took place in four cases, where the courts found the victim's testimony against the accused to be unreliable.

Of the seven convictions, the victim incriminated the accused in three cases. In *State of Maharashtra v Rameshwarlal Hemram Jat and Ors.*,⁷⁷ the 15-year-old victim was forcefully married to the accused by her parents and an acquaintance. After marriage, the victim's husband established sexual relations with her forcefully. She lodged a complaint against the accused persons which included her husband, her mother, father, priest, two neighbours, the landlady and an acquaintance. The husband was charged under Sections 376(2)(i)(n), IPC, Sections 3, 4 and 12, POCSO Act, Sections 9 and 10, PCMA and Section 3(1)(xii), SC/ST Act. The other accused persons were charged for offences under Section 376(2)(i)(n), IPC

⁷⁵ [2017] 10 SCC 800.

⁷⁶ Special Case No.355 of 2016 decided by the Court of Special Judge under POCSO Act, Borivali, Dindoshi on 20.01.2018.

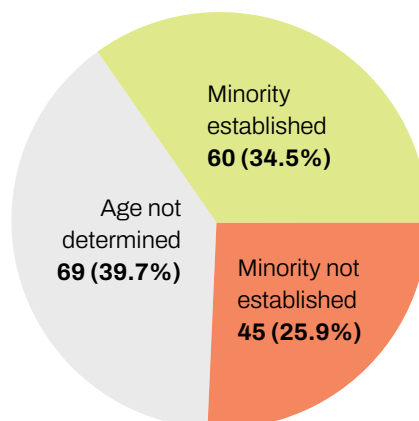
⁷⁷ Spl. POCSO Case No. 62 of 2015 decided by Session Courts, Chandrapur on 31.05.2018.

and Section 10, PCMA. In this case, the priest performed the marriage, while some of the accused persons had only attended the marriage. The prosecution proved that the victim was 15-years-old at the time of marriage by relying on the ossification test done by the medical officer and the testimony of the victim and a prosecution witness. After considering the victim’s testimony corroborated by medical and other evidence, the court found all the accused persons guilty.

In four cases, convictions were recorded even though the victim had not incriminated the accused or the victim did not appear in court. In these cases, the prosecution was able to establish that the victim was a child and the marriage had been solemnised. The courts also relied on medical evidence in these cases, and took into account the relationship between the parties that directly impacted the manner in which the victim had testified.

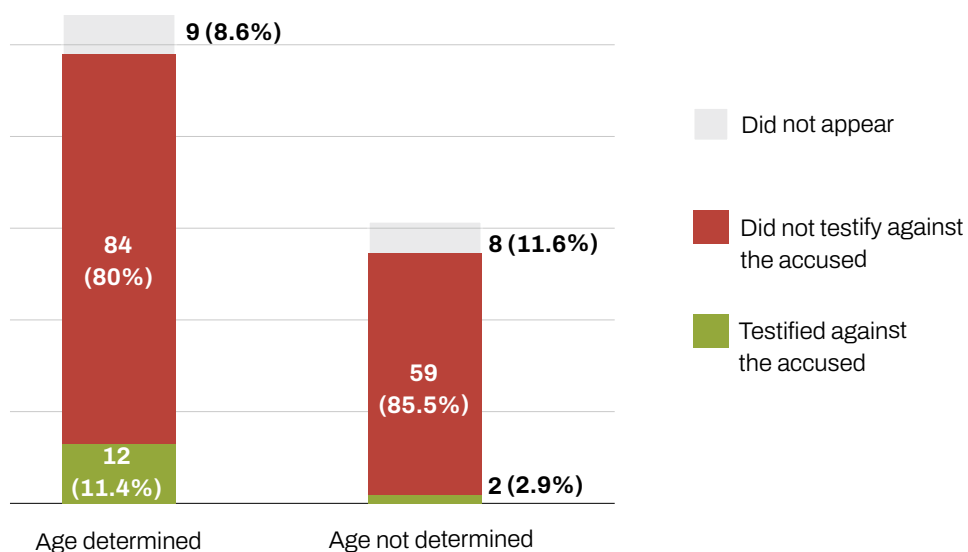
Outcomes vis-à-vis age determination

*Court’s conclusion on age of the child
(n=174 cases)*



Age-determination forms an essential component in PCMA prosecutions and the judgments revealed that establishing the minority of the victim successfully was challenging. In 60 cases (34.5%), the prosecution was successful in establishing the minority of the victim and in 45 cases (25.9%), the minority was not established. In 69 cases (39.7%), the judgment did not refer to conclusions about the age of the victim. While no reason was attributed for courts not determining age, it was observed that courts predominantly did not record findings on age in cases in which the victim did not testify against the accused (59 of the 69 cases) or in cases where the victim did not appear in court (8 cases). In Assam, in 35 out of 45 cases (77.7%), the court did not record its findings on the victim’s age.

Age determination by nature of victim testimony



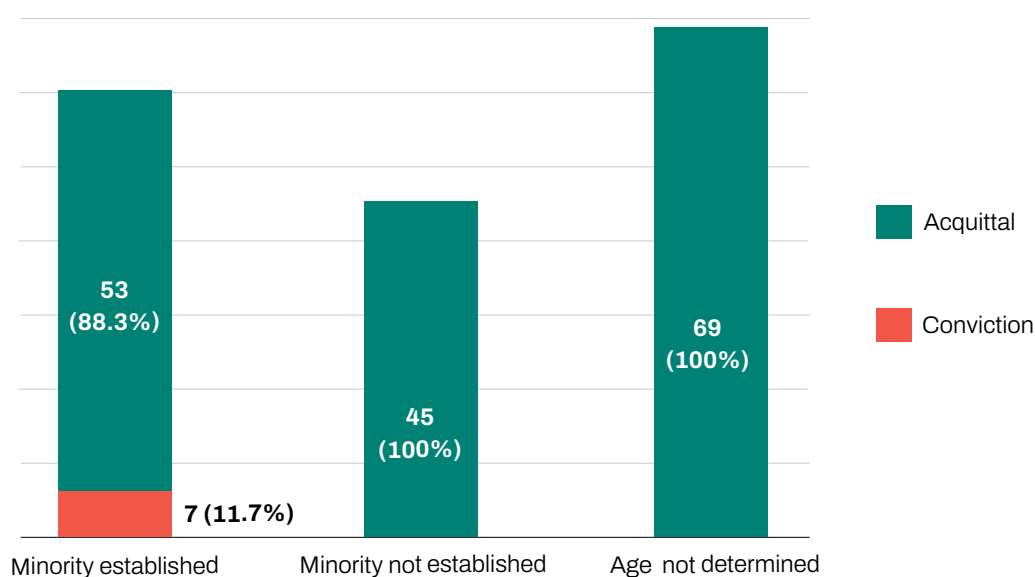
In all seven cases that ended in convictions, the prosecution was able to successfully establish the victim's minority and the solemnisation of a child marriage. Notably, even though the prosecution was able to establish the victim's minority in 53 cases, the accused were acquitted in these cases as the victim did not testify against the accused in 44 cases, did not appear in court in four cases, or there was no other evidence to prove the allegations.

Age-determination by Courts

To prove the victim's age, the prosecution adduced documentary and oral evidence. Documentary proof predominantly consisted of school certificates in 84 cases (48.3%) and birth certificates in 54 cases (31%). Aadhar card was mentioned in 18 cases (10.3%). In some cases multiple types of documentary evidence were produced. In 41 out of 84 cases in which a school certificate was available, officials from the school were examined in court to establish the victim's age. Section 94, JJ Act⁷⁸ laying out the procedure to determine the age of a child was expressly mentioned in only three cases.

The use of medical age determination tests was scant in PCMA cases and was found in only 14 cases (8%). Age findings based on medical age determination tests varied widely with some age ranges of the victim presented as a two-year window and others as a six-month to one-year window. In the 14 cases where medical age determination tests were conducted, minority was established in seven cases, not established in six cases, and no findings were recorded in one case.

Outcomes in PCMA cases by outcomes in age determination



⁷⁸ JJ Act, s 94:

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining— (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of the person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Outcomes vis-à-vis evidence on solemnisation of a child marriage

Another factor that contributed to acquittals was the prosecution's failure in establishing that a marriage had actually been solemnised. Failure of the police in seizing invitation cards, details of kazis, and arresting accused persons from the place of the incident, also affected the evidence available to establish solemnisation of the marriage. For instance, in *State of Assam v Sattar Ali and Ors.*,⁷⁹ the police received information of a child marriage, went to the site of the offence and rescued the minor victim. The accused persons, parents of the victim and the husband, denied being present at the site of the incident. A prosecution witness, a co-villager, testified that the victim had an affair with a minor boy and had threatened suicide if she did not get her married to him. The victim testified that she had a love affair with the accused husband and forced her parents to get her married to him. However, her marriage was stopped by the police as she was 17-years-old. The court did not convict the accused as there was failure to "seize any article of the child marriage, like invitation card, list of stridhan, details/name of kazi etc. to establish the fact that the accused persons were preparing for performing the child marriage of PW2." The court also noted that the accused persons were not apprehended or arrested from the place of occurrence.

In some cases, the defence was able to successfully argue that only preparations or pre-wedding ceremonies were performed and no marriage had actually taken place. For instance, in *State of Tamil Nadu v Ravikumar*,⁸⁰ the Village Administrative Officer complained to the police that the 15-year-old victim and the accused were in love with each other and the accused enticed the victim girl to elope. It was alleged that the accused also tied a yellow thread on her neck in a temple and performed child marriage. Charges were framed under Section 366, IPC and Section 9, PCMA against the accused. The victim testified that she was not married to anyone and she and the accused planned to marry after she turned 18 years of age. The victim's mother testified similarly and stated that only a preliminary function for marriage confirmation ("flower laying ceremony") had been conducted and not an actual marriage. The PCMA charges therefore failed. The kidnapping charges also failed as the victim and her mother did not support the prosecution. The accused person was thus acquitted.

Similarly, in *State of Assam v Md. Rahom Ali and Ors.*,⁸¹ an FIR was lodged after the police received information that a child marriage was taking place in the village. The underage bride (15 years) and groom (16 years) were both rescued. Except the informant, none of the prosecution witnesses including the victims, supported the case. They stated that only discussions of marriage were taking place. The court acquitted the accused persons and noted that the IO "did not seize any article or items from the place of occurrence to show the fact that the marriage was solemniz[ed] or the accused persons were arranging the marriage or participated in the marriage on the date of occurrence".

In *State of Maharashtra v Suresh Balu Desai*,⁸² where although photographs of the marriage ceremony were produced, the court opined:

"Bare production of the photographs is itself not sufficient enough. The photographs needs to be proved through a person who has taken those. But, in the present matter same is not done. Thus, the photographs adduced cannot be relied on."

6.3. Sentencing and Victim Compensation

Of the seven cases that ended in a conviction under the PCMA, a total of 26 accused persons were convicted and sentenced. Of these, 15 accused persons were male and 11 were female. An analysis of sentences did not reveal any uniform or prominent trends and the punishment imposed varied from no imprisonment at all to imposition of the maximum sentence, which is two years for the offences under Section 9, 10, and 11 under the PCMA. Fines ranging from Rs. 500 to Rs. 25,000 were imposed in six of the seven cases in which convictions took place. In two cases,⁸³ the fine amount was directed to be paid

79 G.R. Case No.314/2018 decided by the Court of Addl. C.J.M., Kokrajhar on 23.12.2019.

80 Special Calendar Case No. 48/2021 decided by the Court of Sessions Judge, Magalir Neethimandram (FTMC) Udthagamandalam, Nilgiris on 28.11.2022.

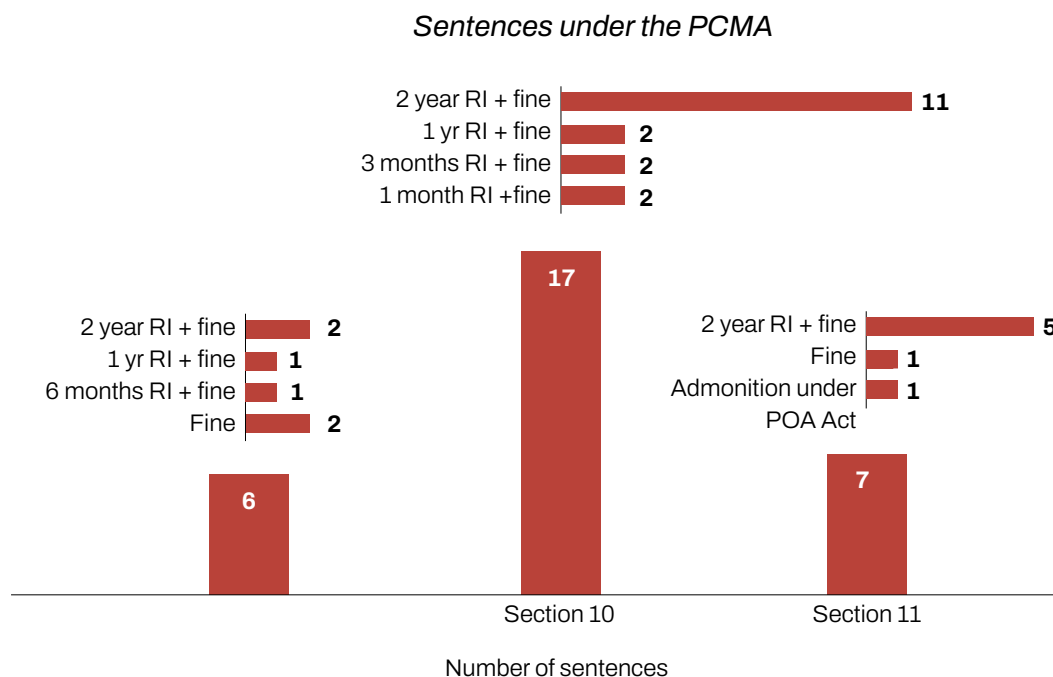
81 G.R. Case No. 1145/2017 decided by the Court of Addl. Chief Judicial Magistrate, Kokrajhar on 9.09.2019.

82 S.C.C. No. 322/2015 decided by the Court of Judicial Magistrate First Class, Kagal, Kolhapur on 6.02.2016.

83 *State of Maharashtra v Ashokkumar @ Sonu Ramashray Gaud and Ors.*, POCSO Special Case No. 430 of 2014 decided by Special Judge under POCSO Act, Gr. Mumbai on 11.11.2021 and *State of Tamil Nadu v Vadivelan and Mohanraj*, Special Sessions Case No. 28/2016 decided by

to the victim as compensation. In one case of conviction under Section 11 of the PCMA, the accused was not sentenced to imprisonment or fined but admonished as per Section 3 of Probation of Offenders Act, 1958 (POA Act).

The highest sentences were imposed in two cases of forced marriages, in which the accused was sentenced under the POCSO Act. In one case, life imprisonment for the remainder of natural life was imposed upon the husband under Section 376(2)(i)(n), IPC.⁸⁴ In the other case, it was the victim's father who was sentenced to life imprisonment under Section 6, POCSO Act as he was found guilty of aggravated penetrative sexual assault and for arranging her marriage when he got her pregnant for the third time.⁸⁵



Compensation to victims was not considered actively by courts, granted exceedingly rarely, and only in cases resulting in convictions under serious charges. **Of the 174 cases, compensation was ordered in only four cases (2.3%) in which the accused were convicted under the POCSO Act.** The compensation amount ranged from Rs. 15,000 to Rs. 10,00,000.

Conclusion

Among the small number of child marriage cases that enter the criminal justice system, it is a fraction that are prosecuted solely for child marriage. What comes to the forefront are parental action against elopements, family disputes, domestic violence, and sexual violence within the marriage, rather than the child marriage itself. Child marriages also come to light when victims seek health services for pregnancy or emergency care, as doctors are bound to report the matter under the POCSO Act. This underscores the reliance on criminal law to regulate relationships, and seek relief against violence within the marriage. It also points to the lack of visibility and accessibility of Child Marriage Prohibition Officers, and the child protection system.

Despite the limitation of being based entirely on judgment text, the findings related to the nature of marriage are in line with qualitative studies that point towards trends of early marriage, rather than child marriage, as well as the rising trends of self-initiated marriages.⁸⁶ With the emerging trend of self-initiated marriages, the historical understanding of child marriages being forced upon young girls needs to be revisited. Self-initiated marriages are taking place within a context of fear of forced marriage, stigma

Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore on 31.01.2018.

⁸⁴ *State of Maharashtra v Rameshwarlal Hemram Jat & Ors.*, Spl. POCSO Case No. 62 of 2015 decided by the Sessions Court, Chandrapur on 31.05.2018.

⁸⁵ *State of Maharashtra v Prakash Dhansing Chavan and ors.* Special (POCSO) Case No. 02/2015 decided by Special Judge & Additional Sessions Judge (Link Court), Mehkar on 27.10.2016.

⁸⁶ [n 23] 70-71.

arising from pregnancy and pre-marital sex, and absence of recognition of autonomy of adolescent girls by their families. In some cases, application of the POCSO Act alongwith the PCMA, has resulted in the use of the law *against* adolescent girls who exercise agency and self-determination by entering into a self-initiated marriage to avoid a forced one. The POCSO Act also comes into play when married girls' access reproductive healthcare.

The complexity of structural inequality, socio-economic conditions and family dynamics that underlie early and self-initiated marriage requires more nuanced, supportive, and targeted interventions rather than punitive legal approaches. Trends in victim testimony reveal a high degree of reluctance to incriminate the husband and family members even in arranged/forced marriages. Factors such as financial dependency, disruptions caused by a criminal case, social stigma attached to criminal prosecutions, alongwith the social pressure to remain within a marriage, have to be factored in while relying upon the criminal law to regulate child marriage.

Policy efforts need to be focused on empowering and supportive interventions. Without holistic and systemic support, which includes safe shelter, education, employment opportunities, psychological and health support, and legal support to exit a child marriage, effective participation of girls compelled into a marriage cannot be ensured. Considering that self-initiated marriages are significant, life skills and comprehensive sexuality education should be introduced early on in schools and community settings. Adolescent-friendly health clinics and Child Protection Committees need to be functional and accessible. Efforts also need to be made to ensure that adolescents have unhindered access to reproductive and sexual health care and social protection schemes for pregnant women, without triggering the criminal justice system.



About Enfold

Enfold Proactive Health Trust is a non-profit based in Bengaluru founded in 2001, and is working towards building safer, rights affirmative, inclusive spaces and justice systems for children and communities.

For more information, visit www.enfoldindia.org

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Contact us: info@civicalab.in,

Website: www.civicalab.in

LinkedIn: <https://in.linkedin.com/company/civicalab>

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