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Shielding the Vulnerable: Analysing Pivotal Legal Precedents in Prosecuting Crimes Against Children Throughout India

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ABSTRACT

Children have endured many forms of violence from the beginning of time. Although it is hard to believe, given that we view children as the future of our country, it is fair to state that they have experienced a great deal of neglect. Children are victims of crimes regardless of their gender or age; rather, they are victims because they are unable to understand the nature of the crimes being perpetrated against them and the repercussions that will follow, making them easy prey for the perpetrator. They are an offender's preferred victim because of their innate innocence and maturity, which are typically correlated with a child's age. To guarantee that children receive all the rights that are due to them, it is crucial to protect them from all types of violence, abuse, and exploitation in a variety of contexts, such as the family, community, and larger society. The law already stipulates severe penalties that must be applied against anyone who violates the law or commits a crime against a child; over time, these penalties must be more severe in order to prevent and deter offenders from committing such crimes. The focus of this Research Paper is completely on the contemporary scenario of the crimes against children. Although there is no denying that any type of crime poses a risk to everyone, children are especially vulnerable to victimisation because they lack adequate protection.

Keywords: *child, violence, crime, abuse, psychological abuse.*

I. INTRODUCTION

Children are no longer safe outside or at home, as seen by the sharp increase in crime. Although we see them as the nation's future, they nonetheless fall within the most vulnerable categories of society. Although while the constitution also grants some rights to children and there are laws in place to protect them, it is still important to consider the repercussions of crimes against children. Several factors, including those that affect the child's physical health as well as their mental health, contribute to the victimisation of children. Although they might recover physically, the psychological trauma might not, and this will have an influence on the child's

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future. So, their physical as well as mental immaturity and frailty can be linked to the causes of all offences. All of this is carried by them from conception to adulthood. The strict legal system, criminal justice system, and law enforcement organisations are tackling every issue to stop crimes against minors. The prevention of crimes against children is greatly influenced by society and the community, so it is the duty and responsibility of society's members to combat this social ill while keeping in mind morals and human values. The planet is getting smaller in the current, globalised era.

Today, we can communicate with the rest of the world from the convenience of our homes and offices. Through technology, such rapid communication is made possible. This was made feasible through the internet. Our young people are now world citizens. However, this technological development is also turning into a problem for society. Children now have easy access to the internet, where they are learning violence rather than learning anything new. Children today are more likely to conduct crimes on their own due to a number of compelling or driving circumstances, which eventually leads to legal issues.

To guarantee that children receive all the rights that are due to them, it is crucial to protect them from all types of violence, abuse, and exploitation in a variety of contexts, such as the family, community, and larger society. When children are safeguarded, they may reach their full potential; nevertheless, when they are exposed to hazards, they are more prone to falling victim to the vicious cycle of abuse, neglect, and violence.

(A) Objectives of the study

1. To draw attention to the Judiciary's importance in combating the problem of crime against children in India.
2. To draw conclusions and bring out the suggestions on crimes against children in India.

(B) Hypothesis

Whether landmark cases of crime against children in India significantly shape child protection laws and ensure justice for minors, safeguarding children's rights?

II. LANDMARK JUDGMENTS ON CRIMES AGAINST CHILDREN

The creation of a good society is the law's most important goal. The impartiality, autonomy, and responsibility of the individuals in the judiciary serve as the underlying pillars of this high-esteem triangle. Generally speaking, judicial activism includes a variety of executive gaps in the area of moral rights. The HC's and the Apex Court have been instrumental in ensuring that the general public receives the best advantages.

As a result, it was decided to analyse the judicial opinions in order to demonstrate how concerned the judges are with the prevalent social predispositions and how, in response to the malignancy of these predispositions, they produced decisions that promoted the legal development of juvenile justice. Because of this, the Indian bar has done a good job of upholding the rights of children and educating the public about the rights of the other half of the population.

1. *Ghanashyam Misra v. The State*²

In October 1954, the petitioner was employed as a teacher at the M. E. School in Rainarusinghpur, Dhenkanal District. It was claimed that he raped a ten-year-old schoolgirl called Nalini Kumari Dei on October 4, 1954, at midday, inside the school's boundaries. He was said to have given her two anna pieces shortly after the rape in order to buy sweets and warned her not to tell anybody about what happened. Ghanashyam Misra was sentenced to more time in prison in 1956 for sexually abusing a 10y/o girl, the Orissa High Court noted that the offender was in a position of trust or responsibility over the child.

The ruling states – *“The circumstances are all of an aggravating nature. The victim is a young girl of ten years, and the culprit is an adult of 39 years... He took advantage of his position by inducing her to come inside the school room and committed such an atrocious act, the consequence of which might as well be the complete ruin of the future life of the girl.” Not only did the court enhance the sentence to seven years but also ordered the accused to pay compensation to the father and the child”.*

2. *Gurcharan Singh v. State Of Haryana*³

A young girl aged below 16 years was transported without her will to the victim's fields outside the village, where she was sexually raped. The victim's absence of obvious symptoms of abuse was deemed immaterial by the court due to her age. Furthermore, it determined that the victim could not be held accountable for the crime.

3. *Tukaram and Another v. State of Maharashtra*⁴

In the case known as the Mathura Rape Case, the Supreme Court of India issued an iconic decision in 1979. As a result of the case's emphasis on the subject of sexual assault and consent, India's rape laws underwent substantial modifications.

The incident took place on March 26, 1972, in Mathura, Maharashtra. Tukaram and Ganpat

² Ghanashyam Misra v. The State AIR 1957 ORI 78.

³ Gurcharan Singh v. State Of Haryana 1973 SCR (1) 197.

⁴ Tukaram and Another v. State of Maharashtra 1979 SCR (1) 810

allegedly sexually abused Mathura, a 16y/o tribal girl, while she was being detained at the local police station. The police had taken Mathura to the station to get her statement about a charge she had filed against her brother for kidnapping her.

The cops argued at the trial that the sexual conduct was consensual, while Mathura insisted that she had been raped. The trial court, citing a lack of evidence and adopting the policemen's defence of consensual sexual contact, exonerated the accused officers. This verdict sparked a discussion on how to define consent in rape cases as well as massive public indignation and protests against the ruling. Women's rights advocates and a number of organisations were drawn to Mathura's case, which brought attention to the inequity and deficiencies in the legal framework governing sexual assault. The case exposed cultural biases and prejudices towards rape victims, which sparked calls for legal changes to safeguard survivors and uphold justice. The decision was made in 1979 by a two-judge panel that included Justices A.D. Tendulkar and V.D. Tulzapurkar. The trial court's ruling, which disregarded the power dynamics present in cases of rape committed while a person was in custody, was criticised by the Supreme Court for its systemic deficiencies.

According to the ruling, the trial court erred in accepting the accused policemen's claim of consent. The Supreme Court emphasised that the victim should not bear the burden of proof and that prison rape constitutes a flagrant breach of a person's basic rights. The court ruled that victims' silence does not constitute consent, particularly in instances involving custody where the custodians have a significant advantage in the power dynamic. The trial court was also criticised by the Supreme Court for using Mathura's prior sexual encounters to impugn her character. According to the ruling, a victim's prior sexual experiences are unimportant and shouldn't be used to call into question her veracity.

India's rape laws saw substantial revisions as a result of the Mathura Rape Case. The 1983 modifications to the Indian Penal Code, which included strict measures to protect rape survivors and define non-consensual sexual activity as rape, were largely influenced by the case. The modifications also made it illegal to reveal the identity of a rape victim.

The Mathura Rape Case marked a sea change in how rape and sexual assault are treated legally in India. It brought attention to the necessity of tact, gender neutrality, and a victim-centric approach when handling similar instances. The ruling helped to highlight the importance of legislative reforms to address sexual assault against women in India as well as the rights of survivors and consent.

Significant changes in Indian legislation surrounding rape and sexual assault resulted from the

public uproar and criticism of the court system following the verdict *Tukaram and Others v. State of Maharashtra (Mathura Rape Case)*. These changes attempted to improve survivor safety and address the issues the case brought to light. The following are the main changes made following the Mathura Rape Case:

This amendment resulted in changes to the CLA 1983: IPC that included further restrictions against rape and sexual assault. The significant changes included:

- In recognition of the value of consent, the amendment expanded the definition of rape to encompass non-consensual sexual contact with or without penetration.
- Removing the necessity of physical resistance: The modification made it clear that, especially in situations involving custodial rape or when the victim is in a vulnerable position, the absence of physical resistance does not constitute consent.
- Identity of a rape survivor is protected: The amendment makes it illegal to reveal a rape survivor's identity, protecting their privacy.
- Increased penalties: The amendment increased the severity of the penalties for rape, including increased minimum terms and the potential for life in prison in some circumstances.

4. *Gorakh Daji Ghadge v. The State of Maharashtra*⁵

The Bombay HC found in a case where a man was charged with raping his 13y/o daughter at home that seminal ejection is not necessary to establish rape. Even more severe punishment was warranted because the victim was the accused's daughter. In extreme cases such as this one, when the accused is the father of the victim girl and believed it was okay to deflower his own little daughter to state his lust, only a deterrent punishment may serve the interests of justice.

5. *Harpal Singh & Anr. v. State Of Himachal Pradesh*⁶

In the instance of the rape of a 16y/o girl, the Apex Court permitted the delay in filing the FIR. The court remarked that because the family's honour was at risk, it was normal for family members to think things over carefully before deciding whether or not to launch a case. The court remarked that the girl's agreement to sexual activity was irrelevant since it had been proved that she was below her legal age of 16, which is 16. The court also determined that a reporting delay won't affect the case if a convincing reason can be offered.

⁵ Gorakh Daji Ghadge v. The State of Maharashtra 1980 CRILJ 1380.

⁶ Harpal Singh & Anr. v. State Of Himachal Pradesh AIR 1981 SC 361.

6. *Munna & Ors. v. State of Uttar Pradesh & Ors*⁷

It was alleged that adult convicts at the Kanpur Central Jail had sexually molested juvenile detainees in this case. According to the news story, a youngster called Munna was also unable to sit due to the manner he was treated. Due to their release within a few days of the news report's publication, the juvenile victims named in the petition prevented the session judge from meeting with them. The court instructed the judge to make sure that no one who seems to be less than 16 years old is imprisoned in accordance with the criteria of the Uttar Pradesh Children Act 1951. Children aged below 16 years should be housed in a children's home or another designated safe haven by the government.

7. *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*⁸

Two of a 10y/o girl's friends who had been over to visit the daughter are accused of being locked up and raped by a middle-aged father. The trial court found the defendant guilty of rape, modesty violation, and unlawful detention. While modifying the accusation from rape to attempted rape, the HC maintained the judgement. The Apex Court maintained the decision of the lower court because small inconsistencies in the evidence were not significant. The Court additionally decided that corroboration is not required for conviction in rape cases. The following decisions relied on this decision to secure the defendant's conviction when no more eyewitnesses could support the victim's evidence.

8. *Sheela Barse & Others v. Union of India & Others*⁹

The Supreme Court of India delivered a decision on August 13, 1986. She focused a lot of her attention on the subject of youngsters being wrongfully detained in facilities with adult offenders. This case was filed as a PIL seeking remedy for the rights and protection of female inmates in Indian jails. To raise attention to this infringement on the rights of children and to seek redress in court, Sheela Barse launched public interest litigations (PILs). In this instance, the court ruled that it is against the law and against the constitution to house minors in adult prisons. The court ordered the government to establish juvenile homes and specific facilities for the upbringing, security, and rehabilitation of youngsters who breach the law.

This decision played a critical role in the development of India's juvenile justice system and in ensuring the preservation of children's rights. It demonstrated how important it is to treat children who have broken the law with special regard and to provide them with the appropriate

⁷ *Munna & Ors. v. State of Uttar Pradesh & Ors* AIR 1982 SC 806.

⁸ *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* AIR 1983 SC 753.

⁹ *Sheela Barse & Others v. Union of India & Others* 1983 SCR (2) 337.

rehabilitation and help rather than locking them up with adults. Sheela Barse's work on the issue of juveniles being imprisoned without legal basis has had a considerable influence on the protection of children's rights in India, and her efforts continue to inspire initiatives to alter the juvenile justice system.

9. Vishal Jeet v. Union of India¹⁰

The court's reading of Article 23 was limited to the topic of child prostitution in a public interest case brought by a lawyer. As stated by the court, the word trafficking in human beings is an extensive expression. A part of it is making it illegal to traffic women for immoral or other reasons. It is regrettable to see how many underprivileged girls and children are forcibly forced into the flesh trade at a young age. This is a flagrant breach of human decency and morals. The following policies have been created by Honourable Justice S.R. Pandayan to combat prostitution.

Gaurav Jain's case addressed the subject of child prostitution with exceptional concern. Ramaswamy J. interpreted parts of the Immoral Traffic (Prevention) 1956 and provided guidance on how to proceed after hearing arguments in an appeals court case addressing the status of children of prostitute victims without passing judgement on the legality of other charges. Three judges did a bench review and recall of the whole verdict.

Referring to the situation of prostitute in *Gaurav Jain v. Union of India* "Prostitutes has always been an object and has never been seen as a complete human being with the dignity of the person as if she has no personal needs or aspirations, neither individual nor collective," the court stated in reference to the condition of prostitutes. Their difficulties are made worse by the compulsion and torture they are subjected to; when they attempted to avoid prostitution, they were violently treated; as a result, many of them decide to turn to prostitution. She must deal with the challenge of having and raising kids while caught in this trap. Their kids experience prejudice and social exclusion on an equal basis. They should be included in the social order without any discrimination since they are victims of circumstance and should be regarded as fellow humans.

10. State of Punjab v. Gurmit Singh and Others¹¹

In this instance, the Apex Court strongly objected to the defendants' acquittals on charges of gang-raping a 16y/o girl. The young country girl was described by the trial court as having a shady personality who made up the rape claim to get away with spending the night away from home. It had rejected using her testimony as evidence. The trial court's evaluation of the

¹⁰ Vishal Jeet v. Union of India 1990(3) SCC 318.

¹¹ State of Punjab v. Gurmit Singh and Others 1996 SCC (2) 384.

evidence was deemed "not only unreasonable but perverse" by the Supreme Court. It maintained: "*The victim's testimony is crucial in these cases, and the courts shouldn't have any trouble convicting an accused person based solely on a victim of sexual assault whose testimony inspires confidence and is deemed to be reliable unless there are compelling reasons that require looking for corroboration of her statement. In such situations, generally speaking, seeking confirmation of her assertion before relying on it would be adding insult to injury.*"

11. State Of Andhra Pradesh v. Gangula Satya Murthy¹²

A 16y/o girl was raped and killed by strangulation. The defendant was found guilty by the Sessions Court and given a life sentence plus 7 years of hard labour. Nevertheless, a Division Bench of the Andhra Pradesh HC cleared him on appeal due to a few small errors and inconsistencies. The Andhra Pradesh State has challenged this acquittal. The court found that this time's acquittal was unreasonable and lacking in compassion. The courts "should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape," according to a clear statement.

12. State v. Freddy Peats and Others

Freddy Peats was in charge of running the Gurukul Orphanage in Colva, Goa. 27 boys from shelters were the targets of different heinous sexual acts between 1980 and 1991. Peats would use the boys by delivering them to other foreigners for sex as well as abusing them personally. He would administer steroids to the boys' testicles and take pornographic images of them. The problem was ultimately made public in 1991. In order to protect the victim boy's confidentiality and dignity, the trial was videotaped. The prosecution's evidence demonstrated that Peats had unjustly detained the youngsters and committed criminal acts. It was also proven that he received payment for allowing other persons to abuse the youngsters. The decision was made by an additional sessions judge in Margoa in 1996, and the Bombay Court's Goa Bench affirmed it in 2000. **Due to exceptional circumstances, the case's muddemal is held with the Nazir of the court in a sealed state.**

13. Sudesh Jhaku v. K.C.J & Others, Delhi¹³

A high-ranking administrator in the Ministry of Home Affairs engaged his daughter, 6, in a series of sexually explicit games and orgies with him and other adults. The court system was forced to take into account a variety of sexual assault and abuse-related concerns as a result of

¹² State Of Andhra Pradesh v. Gangula Satya Murthy 1996 SCALE (3) 435.

¹³ Sudesh Jhaku v. K.C.J & Others 1998 CRILJ 2428.

this scandalous and horrific case. The definitions of the words "rape," "penetration," and "granting a higher punishment to sexual offenders who hold a position of trust and authority" needed to be clarified and expanded. The court also discussed the safety measures to be employed when calling a kid to testify in court. The ruling mentions a number of kid-friendly practices including asking the child basic questions and providing breaks. It also emphasises how the use of a screen might make a youngster uncomfortable during a deposition in addition to preserving their identity. 'Support personnel' or 'neutral adults' who can hold the youngster during the experiment are also included.

***14. State Of Karnataka v. Manjanna*¹⁴**

Hosadgura Hospital declined to evaluate a 15-year-old female victim because she had not been reported by the authorities. The Court expressed its concern with this behaviour by government hospitals, especially in rural areas where there aren't many hospitals, and noted the destruction of evidence as a result of the prolonged completion of medical examinations. The ruling also said that the victim's age should be taken into consideration wherever possible.

***15. Sangeeta Punekar v. State Of Maharashtra And Others*¹⁵**

The filing of a writ of mandamus to make sure that institutions housing young children are not permitted to function without the requisite licencing was spurred by social workers' experiences while working on the Prem Sagar case. In the Prem Sagar case, Rev. Alfred, the facility's director, made an effort to rape a few children. It was observed that Rev. Alfred sustained to stay at the institution and mistreat the girls despite the knowledge that an FIR had been filed against him. The judgement affirms a few Juvenile Justice Act tenets that are essential for safeguarding youngsters residing in facilities.

***16. Sakshi v. Union of India*¹⁶**

In order to expand rape's definition to include scenarios that involve children in which the child is injured by having anything inserted into the vagina or by having the male organ inserted into a body part like the mouth or anus, the non-governmental organisation Sakshi filed a writ petition in the Public Interest. The public interest lawsuit was dismissed by the Apex Court after it rejected the petition. However, it resulted in helpful principles for the prosecution of child rape as well as sexual abuse cases. These are the Sakshi guidelines:

- A barrier that keeps the accused's body or face hidden from the victim or witnesses.

¹⁴ State Of Karnataka v. Manjanna APPEAL (CRL.) 1911 OF 1996.

¹⁵ Sangeeta Punekar v. State Of Maharashtra And Others 2002 (2) BOMCR 468.

¹⁶ Sakshi v. Union of India WRIT PETITION (CRL) NO 33, 1997.

- Questions raised during cross-examination on behalf of the accused that are “directly related to the occurrence must be submitted in writing to the court's presiding officer so that they may be presented to the victim or witness in a straightforward and distressing way.
- Victims of rape or child abuse should be given proper breaks throughout their testimony.

***17. Childline India Foundation & Anr v. Alan John Waters & Ors*¹⁷ (Anchorage Case)**

In Colaba, Mumbai, where British citizens and former navy officers Allan Waters and Duncan Grant formed the Anchorage Home, which became a hub for sex tourism for many other countries, a case of institutional child sexual abuse was revealed in 2001. In March 2006, a Mumbai sessions court found Grant and Waters guilty of sodomy and sexually assaulting 5 young boys, and it sentenced them to 6 years in jail. They filed an appeal, and the Bombay HC exonerated them in 2008. The Apex Court reversed the conviction and sentence in 2011, nevertheless. Following the completion of their terms, Grant and Waters were deported back to the UK where they are now registered on the Sex Offenders Register.

III. CONCLUSION

It is suggested that a comprehensive strategy including everyone is necessary to protect the best interests of the child. Even if there are several legal papers in place, the perpetrators of child sexual assault are often able to escape prosecution because they frequently fall short of the requirements for doing so. Child sexual abuse cases are growing swiftly, there is a culture of silence around this critical problem, the law is not being administered effectively, and there aren't adequate procedures in place, particularly in underdeveloped areas, to prevent child sexual abuse. These are just a few of the significant challenges facing society today. To avoid and control child sexual abuse, drastic measures must be taken. Parents may protect their children from harm in addition to legislative measures and legislation by spotting warning indicators in them. To confront the problem of child sexual abuse, the entire human species must come together.

¹⁷ Childline India Foundation & Anr v. Alan John Waters & Ors CRIMINAL APPEAL NOS. 1205-1207 OF 2008