

Criminalisation of Adolescent Sexuality in India: Advancement of Child Protection or Curtailment of Rights?

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Enfold Proactive Health Trust

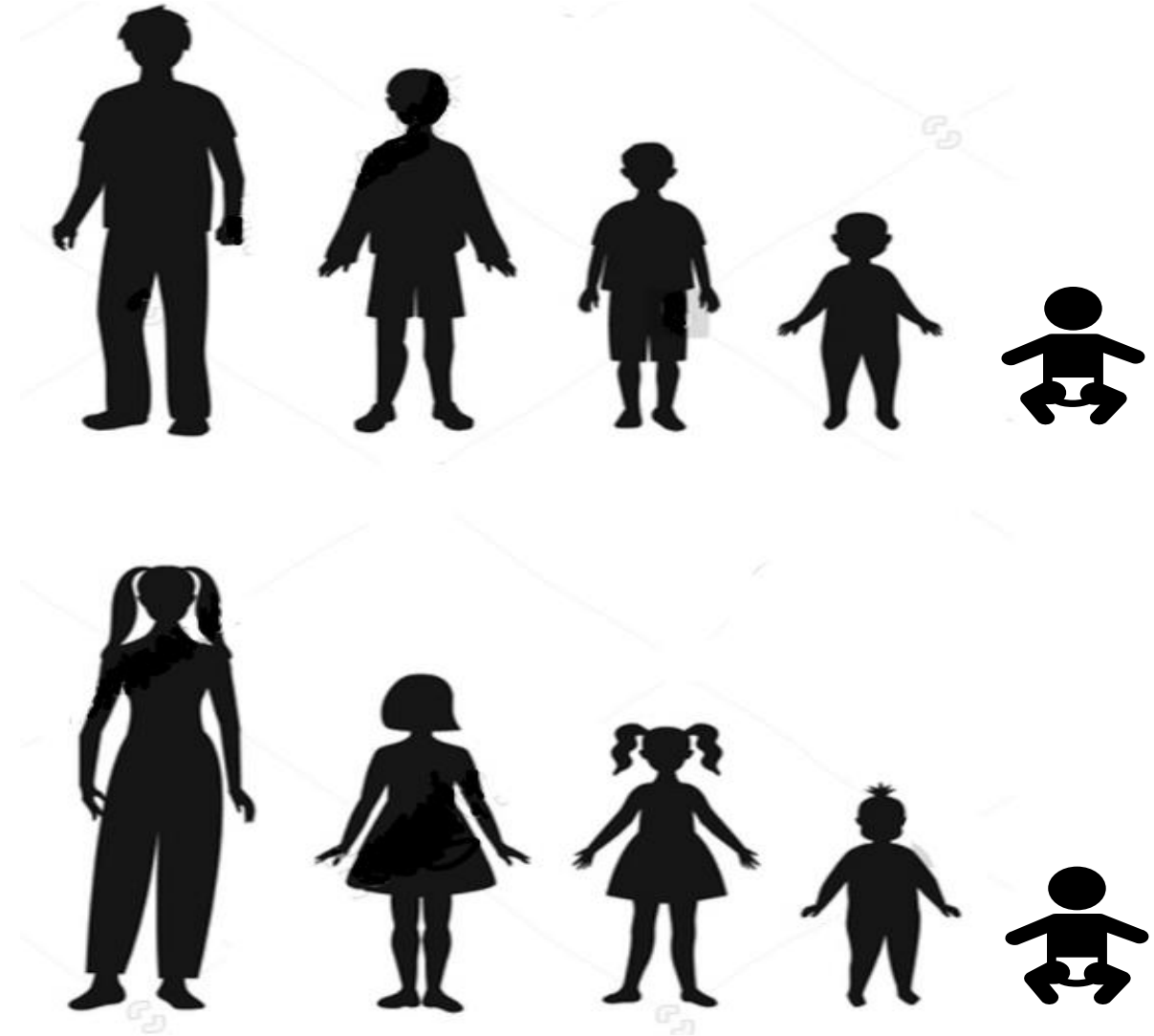
SVRI FORUM

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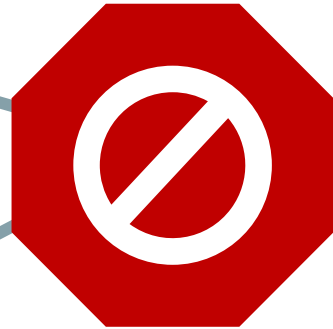


Creating safe spaces

Legal Framework Relevant to Adolescent Sexuality



‘Child’ means any person below the age of 18 years [Section 2(d), Protection of Children from Sexual Offences Act, 2012]



Any sexual act (penetrative/non-penetrative) with a “child” constitutes an offence under the POCSO Act.



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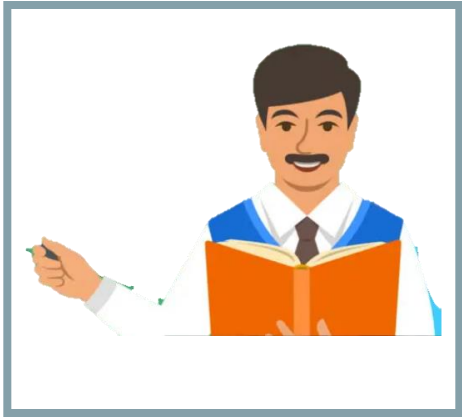
Acts that result in pregnancy, acts by a person related to the child by marriage or repeated sexual acts, **are aggravated offences.**



Punishment entails minimum 20 years rigorous imprisonment which may extend to life imprisonment i.e., for the remainder of the natural life of that person, and fine, or death.



Non-exploitative and factually consensual relationships among adolescents or with adolescents is not recognized under Indian law.



- Mandatory reporting obligation requires “anyone” having the knowledge of commission of a sexual offence to report to the police.
- Failure to report is a punishable offence.
- **Reporting obligations routinely arise when an underage girl seeks abortion or pregnancy care.**

“Romantic” Cases under the POCSO Act:
An Analysis of 1715 Judgments of Special Courts in
Assam, Maharashtra & West Bengal
(2016-2020)



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What are “Romantic” Cases?

A case with charges under the POCSO Act in which:

- **“Victim” girl** expressly admits to being in or having been in love with the accused and/or having engaged in consensual sexual activity;
- **“Victim” girl’s family members** or other prosecution witness states that the girl was in a romantic relationship with the accused at the time of offence;
- **Special Court** concludes that the girl was having a love affair with the accused or was in a consensual relationship at the time of offence.

Methodology

Sorting of cases:
7064 judgments
were under POCSO
Act

- Quantitative & qualitative methods used to process 1715 judgments.
- 50 interviews with stakeholders & experts

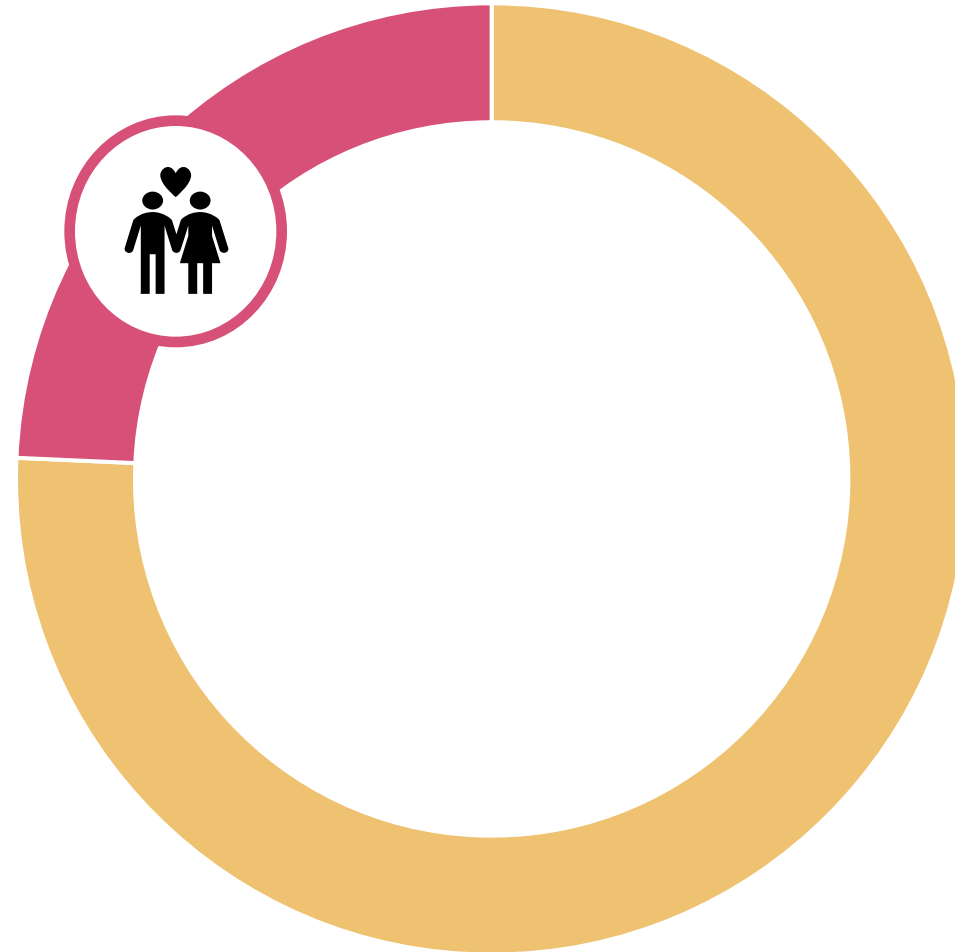
Download of 7478 Special Court Judgments from Assam, WB, & Maharashtra in English (e-courts) between 2016 - 2020

1715 romantic cases identified

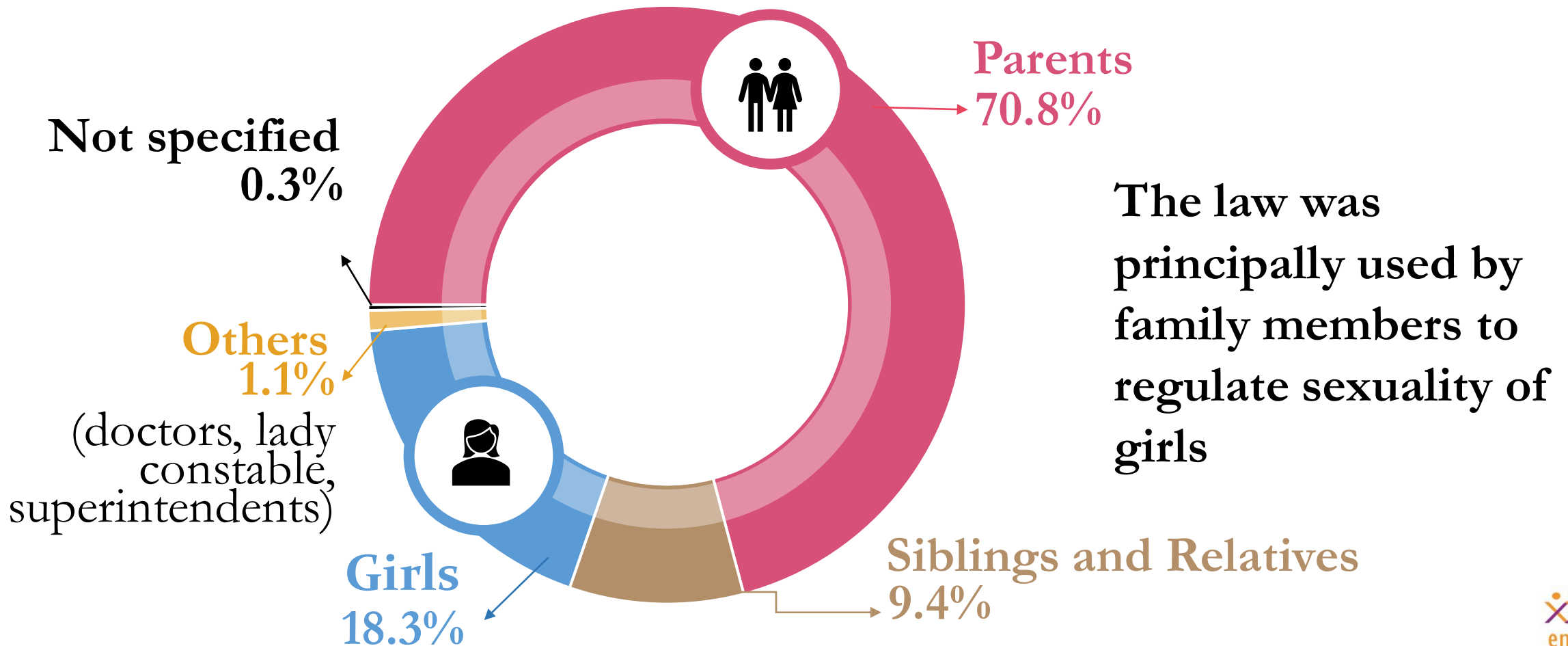
Data was cleaned, verified, and analyzed based on certain key questions of inquiry

Proportion of “romantic cases” before the Special Court

24.3% of all POCSO cases downloaded constituted a “romantic” case

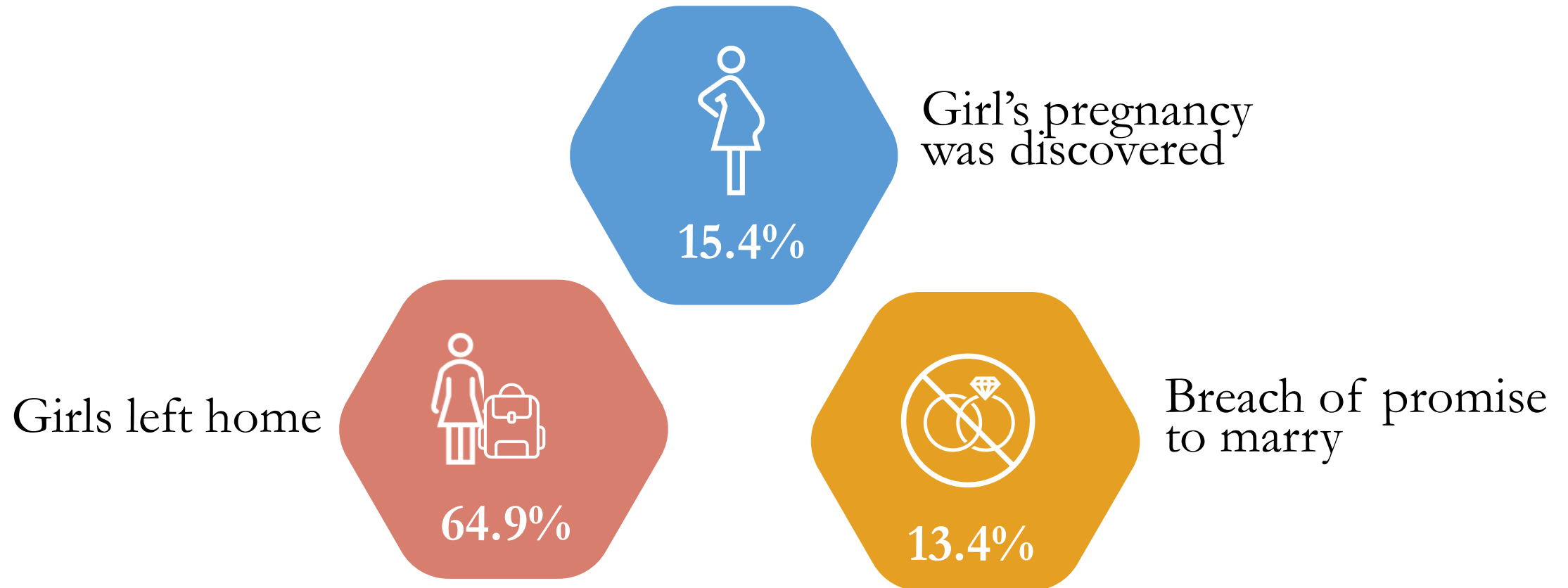


Who Approached the Criminal Justice System?



The law was principally used by family members to regulate sexuality of girls

Circumstances Contributing to Reporting of “Romantic Cases”



* The categories are non-exhaustive and not mutually exclusive

What Prompted the Girls to Leave Home?

280

Parental disapproval of relationship

113

Arrangement of another marriage

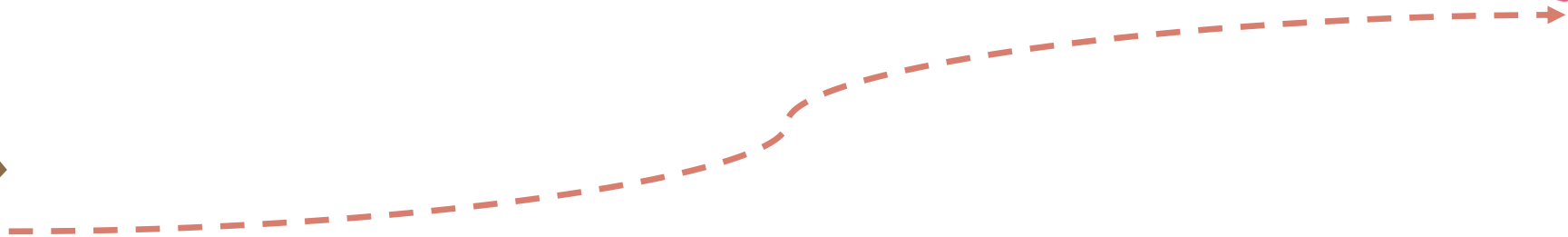
65

Violence or threat of violence at home

59

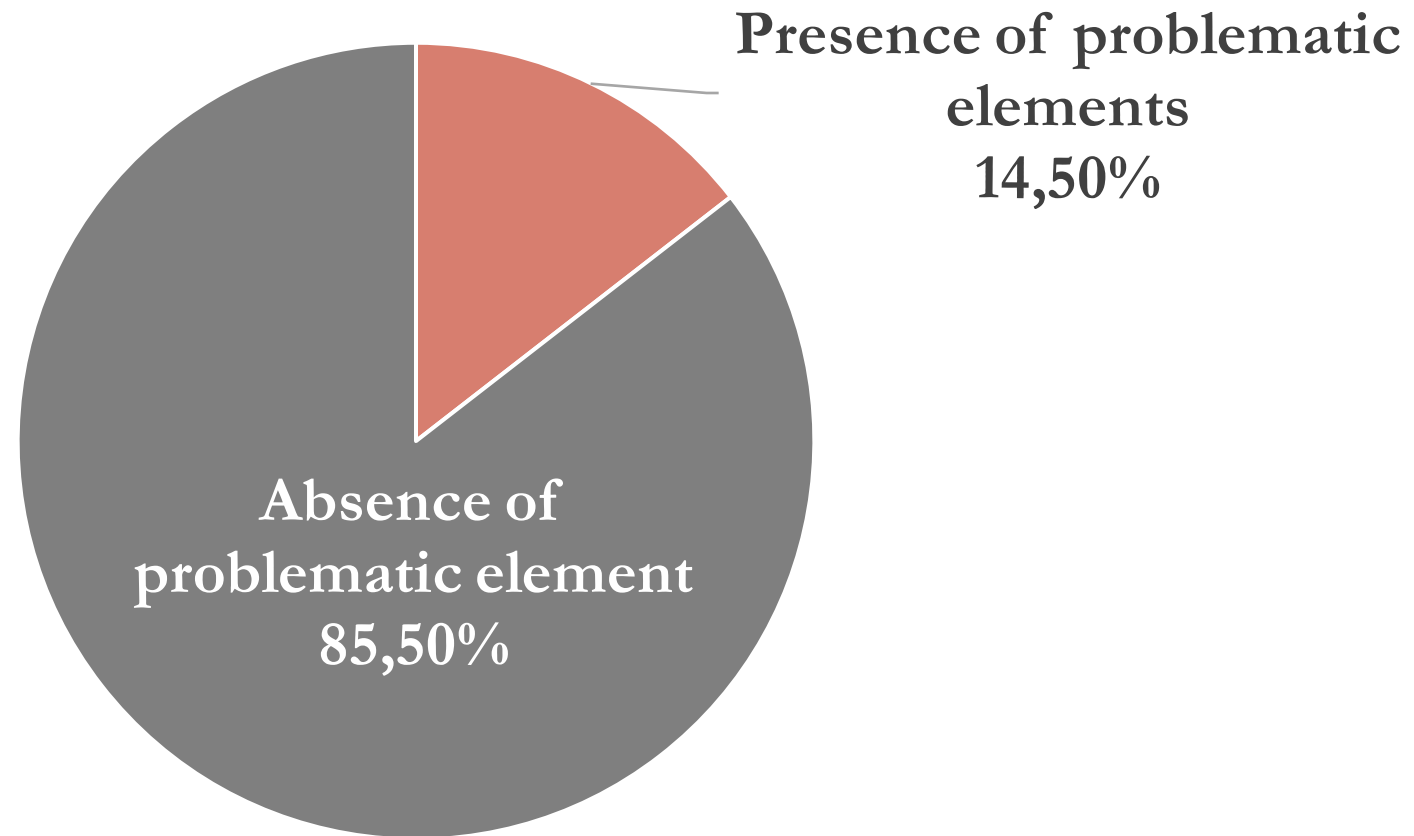
Disagreement/quarrel at home

1113 girls left their home with or to be with their partner



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Nature of “Romantic Cases”



Gender & Marital Status of the Parties

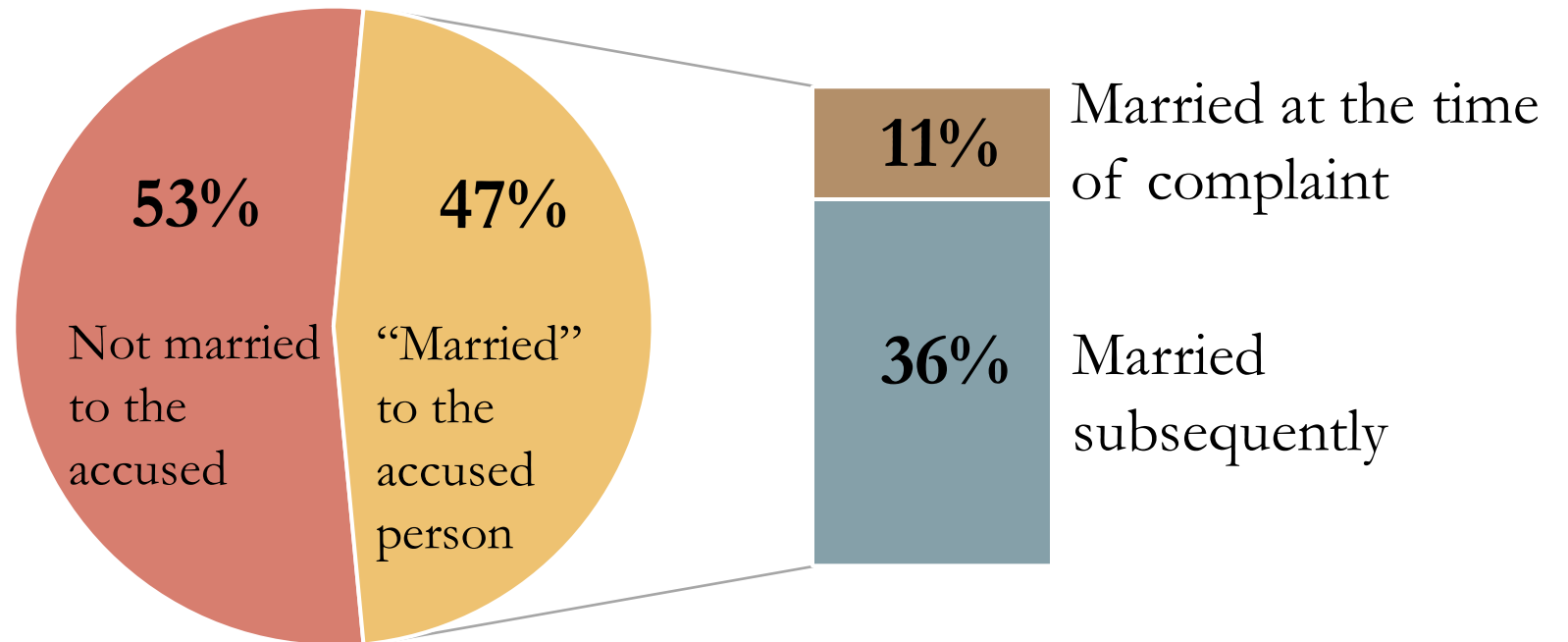
“Victim” girl

1715 Female

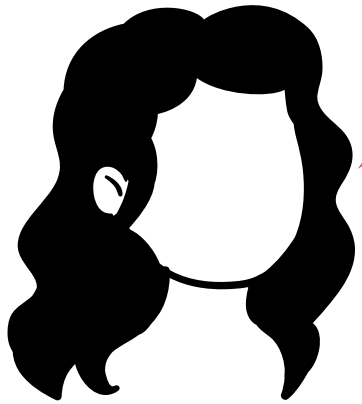
Accused

1714 Male

1 Female



Convictions were an exception in cases in which the girl was married to the accused - 15 cases (1.9%) of the total 798 cases in which they were married resulted in a conviction.



Major

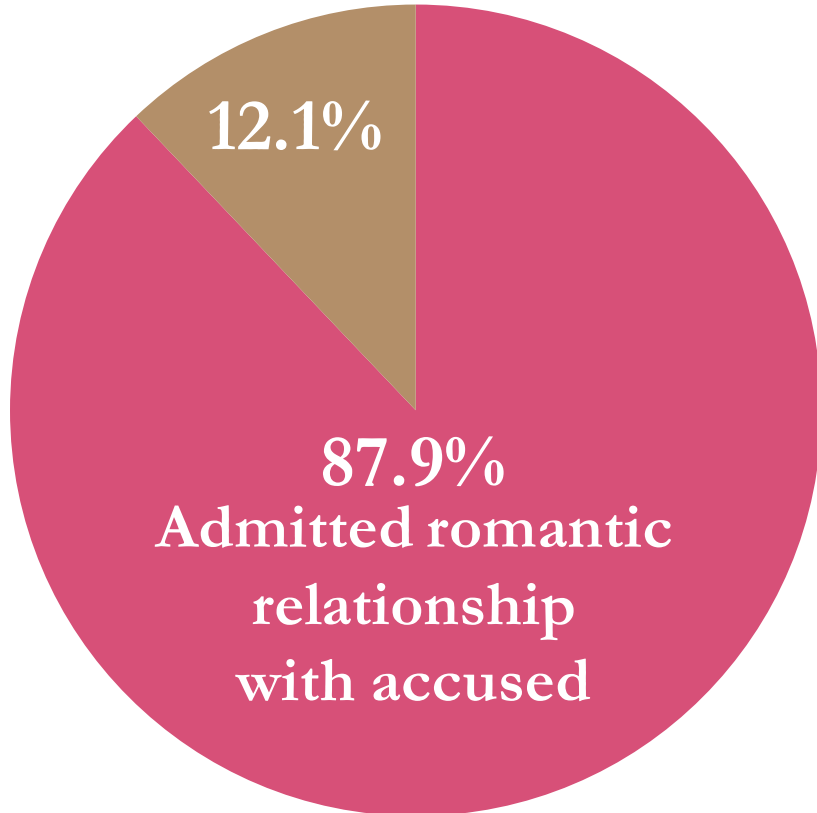
In **21.8% cases**, in which parents claimed that the girl was a minor, the girl stated she was an adult.

Minor



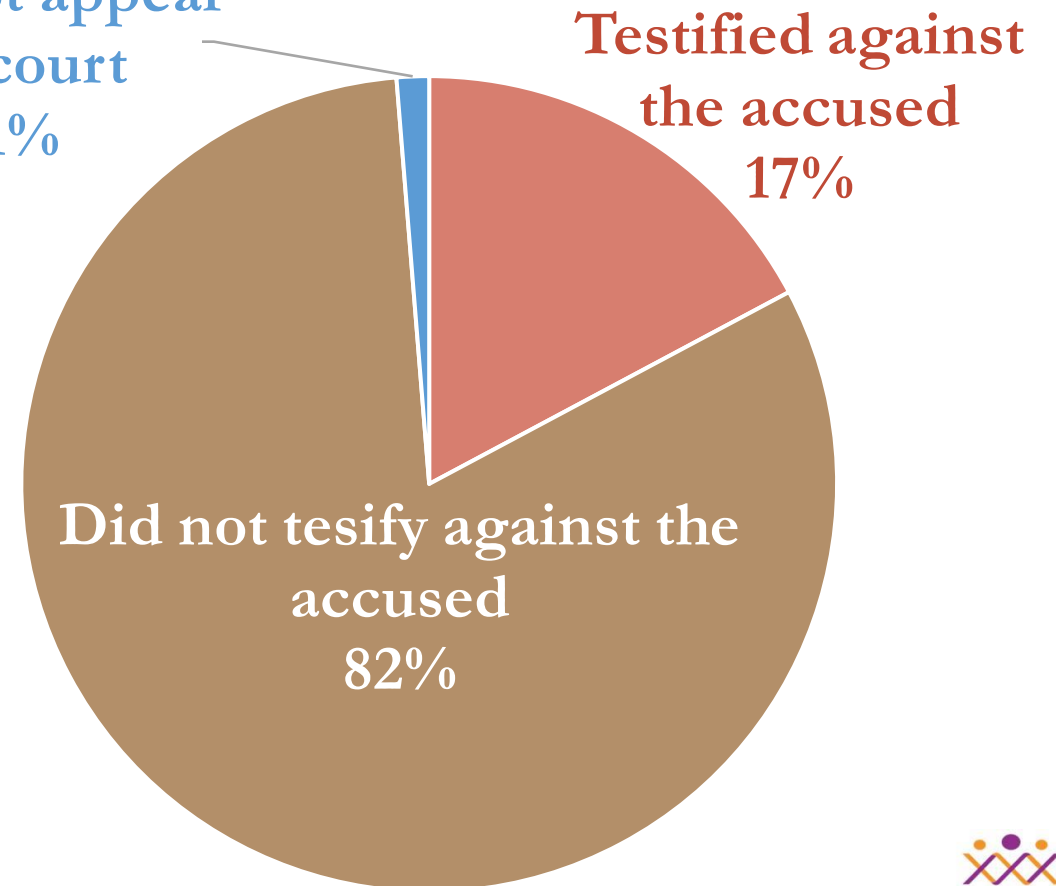
Admission of the Girl to the Romantic Relationship

Silent/Denied
the relationship

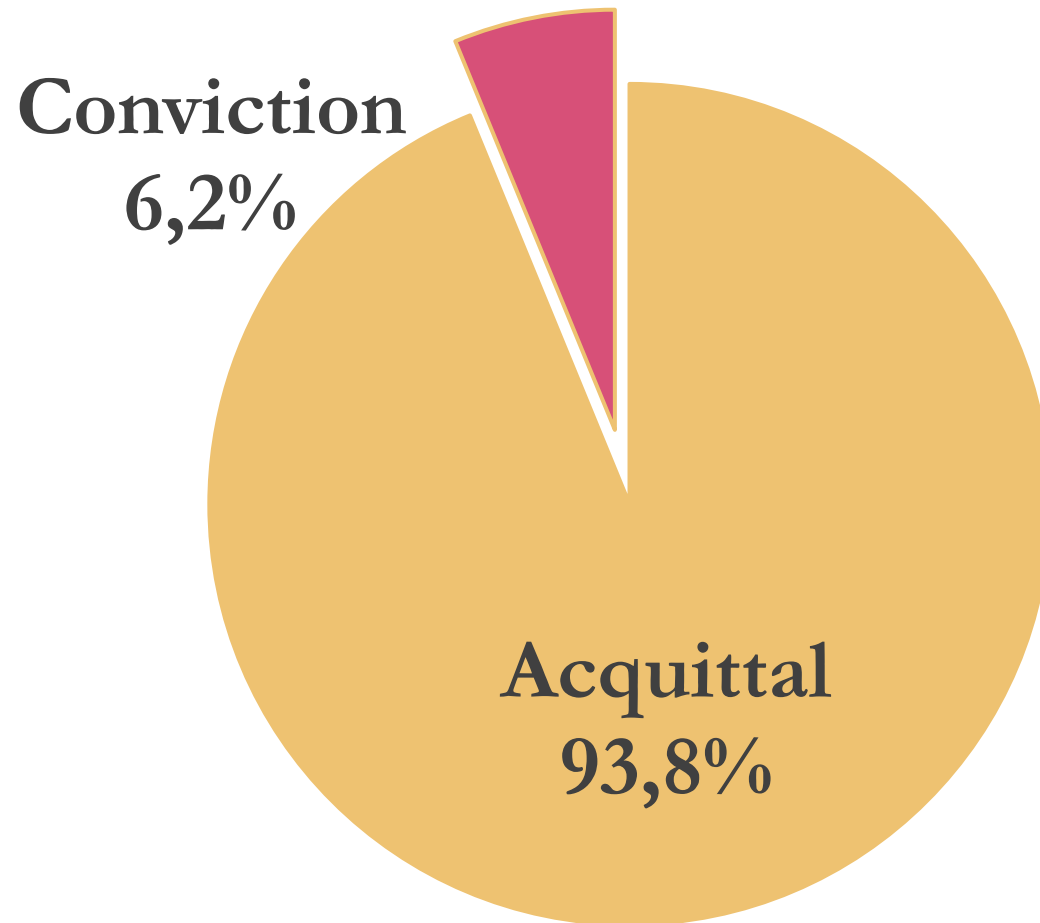


Nature of Testimony of the Girls

Did not appear
in court
1%



Outcomes in “Romantic” Cases under the POCSO Act



Acquittals were the norm in “romantic” cases.

Evidence points to the **consideration of social realities of adolescent sexuality by Special Courts** as in 63.1% cases that resulted in an acquittal the Special Courts expressly acknowledged that the **relationship was consensual.**

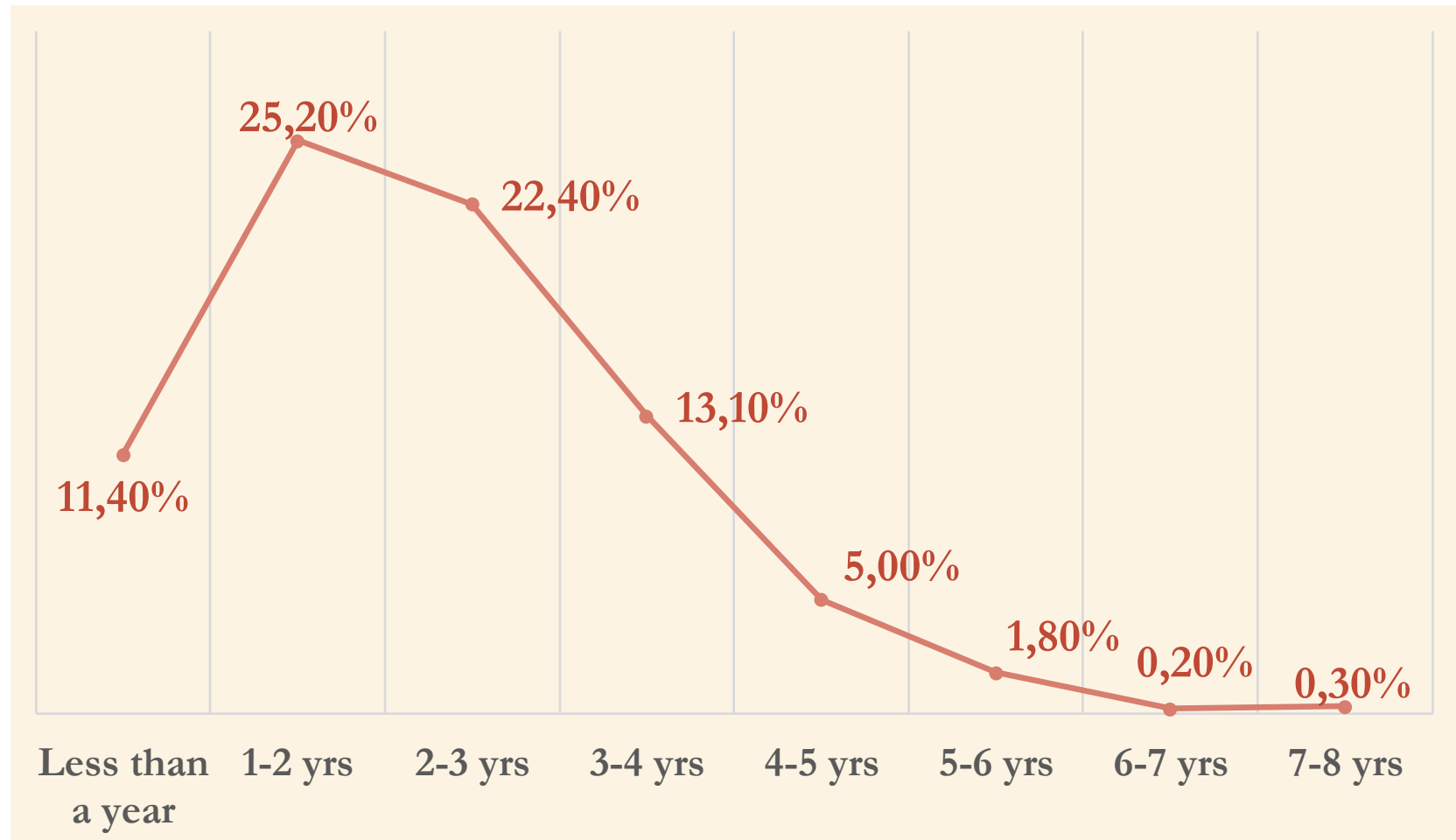
Time Taken to Dispose a Romantic Case: FIR to Disposal

Median Time taken from FIR to Disposal

Assam: 1.4 yrs

Maharashtra: 2.3 yrs

West Bengal: 2.3 yrs

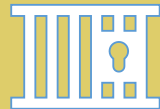


Impact of Criminalisation

Right to dignity
& privacy
undermined



Deprivation of
Liberty



Right to Sexual &
Reproductive Health
Impinged



Best Interests &
Evolving Autonomy
Undermined



Justice System
Overburdened



Normative Basis for Decriminalisation of Adolescent Sexuality

Fundamental rights to life, dignity and privacy are available to adolescents and the Indian Constitution requires that measures are taken to enable children to develop in a healthy manner.

High Courts in India have quashed consensual cases under POCSO Act and made observations about the inappropriateness of criminalisation of adolescents in consensual cases

Indian health policies and school health programmes recognize adolescent sexuality and health programs emphasize barrier free access to services and information.

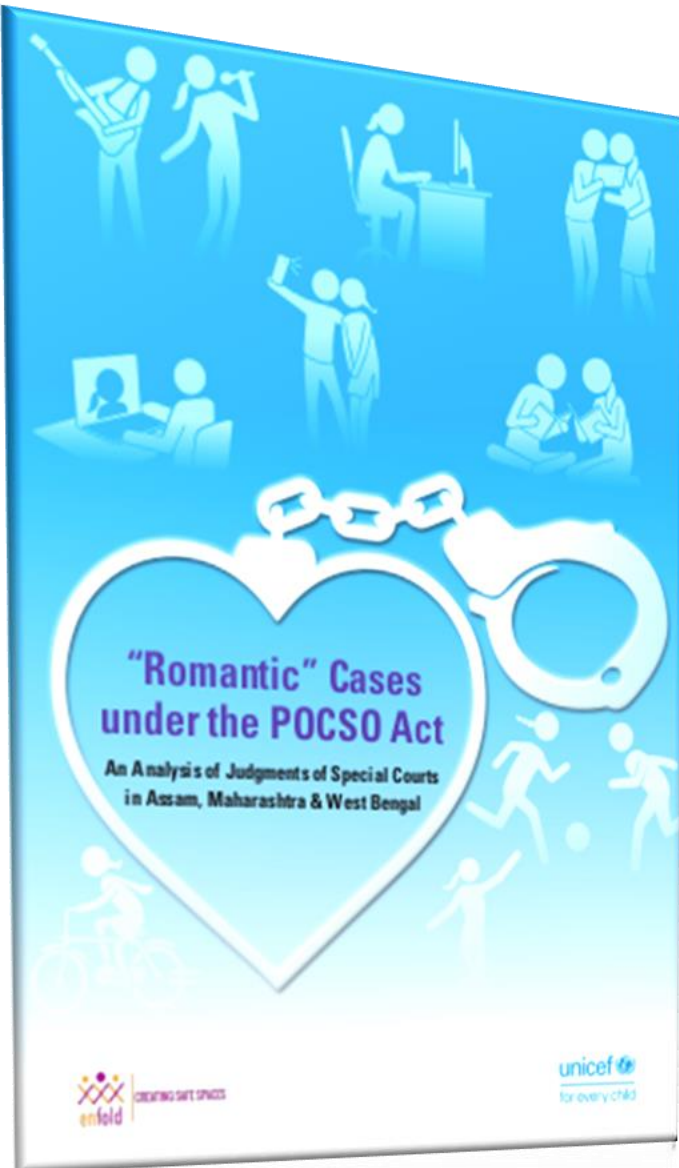
UN Committee on Rights of the Child has asked States to “avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.”

Conclusion

1. The findings raise concerns about the **impact of blanket criminalisation** of developmentally normative sexual behaviour on **adolescents' rights**.
2. Criminalisation of consensual and non-exploitative acts involving adolescents is **detracting from the purpose of the POCSO Act** and **diverting time, resources, and energy away from the investigation and trial of actual cases of sexual violence and exploitation**.
3. **Decriminalisation of adolescent sexuality** is needed with a view to ensure balance between protection from exploitation and acknowledgment of normative sexual behaviour among adolescents.

Way Forward

1. **Legislative Amendment to decriminalize consensual acts involving adolescents above 16 years**, while ensuring that those between 16-18 years are protected against non-consensual acts under the POCSO Act.
2. **Comprehensive Sexuality Education** that is age-appropriate, evidence-informed, and rights based.
3. **Resolving the dichotomy between health programs and the legal regime** through legal reforms to ensure that service providers are not constrained and adolescents' access to sexual and reproductive health information and services is confidential and unrestricted.
4. **Interim measures to reduce the harms** caused by criminalisation while adhering to the existing legal framework may be explored.



**Thank
You**

