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THE PARADOX OF PROTECTION: A CRITICAL ANALYSIS OF THE GAP BETWEEN LEGISLATIVE INTENT AND JUDICIAL ENFORCEMENT IN INDIAN CHILD RIGHTS

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ABSTRACT

The architecture of child protection in India is characterized by a profound paradox: a hyper-active, punitive legislative landscape juxtaposed against a sluggish and fragmented enforcement machinery. This research paper undertakes a critical analysis of the "law in action" versus the "law in books," examining the systemic attrition of justice following the enactment of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the transition to the Bharatiya Nyaya Sanhita, 2023 (BNS).

Utilizing statistical data from the National Crime Records Bureau (NCRB) Crime in India 2024 report, the study exposes a widening chasm between procedural success and substantive failure. While charge-sheeting rates for IPC crimes remain high (approximately 72.7%), conviction rates for crimes against children under POCSO stagnate between 20% and 36%. This discrepancy is attributed to a "procedural defeat" caused by the reliance on degrading oral evidence, the failure of Fast Track Special Courts to manage case bottlenecks, and a pervasive "compromise culture" abetted by police insensitivity.

*Doctrinally, the paper critiques the judicial misinterpretation of "intent" (Section 300 IPC) versus "knowledge" (Section 304 IPC) in cases of fatal child abuse. It argues that the judicial application of the "Single Blow" doctrine and "Heat of Passion" defense in child homicide cases ignores the physiological vulnerability of children and inadvertently trivializes fatal abuse. The analysis further traces the oscillation of judicial interpretation, from the restrictive definitions in *Sakshi v. Union of India* to the restorative corrections regarding "skin-to-skin" contact in *Attorney General v. Satish*.*

Finally, the research contrasts India's retributive justice model with the restorative Scandinavian Barnahus framework, advocating for a centralized approach to evidence gathering to minimize secondary victimization. The study concludes by addressing the emergent threat of Deepfake technology and Generative AI, which challenges the ontology of evidence under the new Bharatiya Sakshya Adhinyam, 2023 (BSA) and exposes the obsolescence of current obscenity laws.

Keywords: Child Rights, POCSO Act, Judicial Enforcement, NCRB Data, Culpable Homicide, Restorative Justice, Barnahus Model, Deepfake Technology.

INTRODUCTION

The architecture of child protection in India is characterized by a profound paradox: a legislative landscape that is hyper-active and increasingly punitive, juxtaposed against an enforcement machinery that remains sluggish, fragmented, and sociologically resistant to change. Over the past decade, the Indian state has signaled a zero-tolerance approach to crimes against children through the enactment of the *Protection of Children from Sexual Offences (POCSO) Act, 2012*, the subsequent strengthening of the *Indian Penal Code, 1860 (IPC)*, and the transition to the *Bharatiya Nyaya Sanhita, 2023 (BNS)*. Theoretically, these statutes construct a fortress of immunity around the child, criminalizing not just the act of abuse but the intent, the attempt, and the failure to report. However, the critical analysis of the "law in action" as distinct from the "law in books" reveals a systemic attrition of justice.

This chapter undertakes an exhaustive critique of the enforcement mechanisms and judicial interpretations that define the current reality of child protection in India. It moves beyond a mere recitation of statutory provisions to examine the friction between legal mandates and institutional capacity. The analysis is grounded in the most recent statistical disclosures, including the National Crime Records Bureau (NCRB) *Crime in India 2024* report (released in 2025), and dissects the doctrinal evolution of the judiciary through landmark rulings.⁹⁴⁸

We begin by evaluating the statistical efficacy of the IPC and POCSO, interrogating why high charge-sheeting rates collapse into abysmal conviction rates. The analysis then pivots to the doctrinal crisis in homicide cases involving children, where the judiciary often misinterprets "intent" (Section 300 IPC) versus "knowledge" (Section 304 IPC), inadvertently trivializing fatal child abuse. Subsequently, the chapter traces the judicial arc from the restrictive definitions of

*Sakshi v. Union of India*⁹⁴⁹ to the restorative corrections in *Attorney General v. Satish*,⁹⁵⁰ and the horizontal expansion of the *Vishaka* guidelines to educational institutions.

Furthermore, this chapter exposes the administrative failures police insensitivity, delayed FIRs, and the "compromise culture" that serve as the primary exit points for offenders. A comparative critique contrasts the retributive Indian model with the Scandinavian *Barnahus* (restorative justice) framework, arguing for a structural shift in how evidence is gathered. Finally, the analysis addresses the emergent threat of Deepfake technology and Generative AI, which challenges the very ontology of "evidence" under the new *Bharatiya Sakshya Adhinyam, 2023 (BSA)* and exposes the obsolescence of Section 292 IPC in the face of virtual victimization.

5.1 Effectiveness of IPC and Special Laws in Child Cases: A Statistical and Doctrinal Critique

The efficacy of a penal statute is ultimately measured by its ability to secure convictions and deter future offenses. In the context of child rights in India, the statistical data presents a grim narrative of procedural success (high registration) followed by substantive failure (low conviction). While the legislative intent has consistently moved towards stricter liability evident in the mandatory minimum sentences and the presumption of culpable mental state under Section 30 of POCSO the judicial outcomes suggest that the system is overwhelmed.

5.1.1 The Statistical Reality: Analysis of Conviction and Pendency Rates (NCRB 2024-2025)

The release of the NCRB *Crime in India 2024* report in 2025 provides a critical diagnostic of the criminal justice system's health. The data indicates a widening chasm between the police's ability to file charge sheets and the

⁹⁴⁸ National Crime Records Bureau, *Crime in India 2024: Statistics and Trends* (Ministry of Home Affairs, Government of India, 2025).

⁹⁴⁹ *Sakshi v. Union of India*, AIR 2004 SC 3566.

⁹⁵⁰ *Attorney General for India v. Satish*, (2021) 5 SCC 545.

judiciary's capacity to conclude trials with convictions.⁹⁵¹

The Charge-Sheet vs. Conviction Paradox

A granular analysis of the NCRB data reveals that the police machinery is relatively efficient at the procedural level of filing charges. For IPC crimes in general, the charge-sheeting rate stands at approximately 72.7%, with rates for major crimes often exceeding 70%.⁹⁵² This suggests that once a case enters the system, the investigative agencies are generally successful in formalizing the accusations into a legal document.

However, the transition from charge-sheet to conviction is where the system fractures. The overall conviction rate for IPC crimes hovers around 54%.⁹⁵³ For crimes against children, particularly under the specialized POCSO Act, the conviction rate is significantly lower, fluctuating between 20% and 36% depending on the state, with a national average recorded at 29.6% in recent years.⁹⁵⁴

This discrepancy points to a "procedural defeat" of substantive law. The Ministry of Law and Justice, in its response to parliamentary inquiries, has attributed this gap to the "quality of investigation and evidence," specifically the reliance on oral evidence.⁹⁵⁵ In child sexual abuse cases, the prosecution's case often rests entirely on the testimony of the minor victim. The low conviction rate suggests that by the time the trial concludes often years after the incident the victim has either turned hostile due to coercion, the evidence has degraded, or the judicial standard of "beyond reasonable doubt" has been applied with a rigidity that fails to account for the trauma-induced inconsistencies in a child's narrative.⁹⁵⁶

Table 5.1: Comparative Analysis of Criminal Justice Metrics (2023-2025)

Metric	Statistical Observation	Systemic Implication
Charge-sheeting Rate (IPC)	72.7% (2023-2024)	High procedural compliance by police; the "entry" into the justice system is functional.
Conviction Rate (General IPC)	~54%	Moderate attrition during trial; implies issues with witness management and prosecutorial efficacy.
Conviction Rate (POCSO)	20% - 36% (State variance)	High attrition; specialized child protection laws are failing to secure outcomes due to evidentiary challenges and compromise culture.
Pendency of Investigation	29.2% of IPC cases	Nearly one-third of cases are stuck at the police level, delaying the start of the trial process.
Crimes Against Children Trend	+26% over two years	Deterrence is not working; alternatively, reporting has improved, but the volume is

⁹⁵¹ National Crime Records Bureau, *supra* note 1.

⁹⁵² *Id.* at Table 1.

⁹⁵³ *Id.* at Table 2.

⁹⁵⁴ Ministry of Law and Justice, *Answer to Unstarred Question No. 2191* (Lok Sabha, Dec. 15, 2025).

⁹⁵⁵ *Id.*

⁹⁵⁶ Centre for Child and the Law, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Law School of India University, 2021).

		overwhelming the courts. ⁹⁵⁷
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The Failure of Fast Track Special Courts (FTSCs)

To address the delay in justice, the central government established a network of Fast Track Special Courts (FTSCs), including 389 exclusive POCSO courts. The mandate was "expeditious trial" as per Section 35 of the POCSO Act, which ideally requires testimony to be recorded within 30 days and judgment delivered within one year.

However, the reality of FTSCs has not matched the legislative ambition. As of 2025, despite the operationalization of over 1,023 FTSCs, the disposal rate has failed to keep pace with the influx of new cases. A *Satyarthi Foundation* study highlights that the registration of POCSO cases has increased by 19-22% year-on-year, a rate that outstrips the general rise in crimes against children.⁹⁵⁸ This creates a "bottleneck effect." As the backlog grows, the time taken for trial increases. In child abuse cases, delay is fatal to the prosecution. A child who is abused at age 10 may be 15 or 16 by the time they testify. The developmental changes, memory decay, and sustained pressure from the accused (who is often a family member or neighbor) drastically reduce the likelihood of a consistent testimony, leading to acquittal.

5.1.2 The Doctrinal Lacuna: Section 300 (Murder) vs. Section 304 (Culpable Homicide) in Child Abuse Deaths

A more profound, doctrinal critique of the IPC's application to child victims lies in the judicial interpretation of "intent" in cases of fatal child abuse. The distinction between Section 302 (Murder) and Section 304 (Culpable Homicide not amounting to Murder) is one of the most congested areas of Indian criminal law. When applied to adult-on-adult violence, the jurisprudence is relatively settled. However,

⁹⁵⁷ "NCRB report: 26% increase in crimes against children over two years", *Deccan Herald* (Dec. 8, 2023).

⁹⁵⁸ Kailash Satyarthi Children's Foundation, *Status of POCSO Cases in India* (2021).

when the victim is a child, the standard application of these principles often results in a miscarriage of justice that minimizes the culpability of the offender.

The "Single Blow" Doctrine and the Vulnerable Victim

Section 300 of the IPC defines murder. Clause 3 of Section 300 is particularly relevant: it states that culpable homicide is murder if the act is done "with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death".⁹⁵⁹ The Supreme Court, in the seminal case of *Virsa Singh v. State of Punjab*, established that the prosecution must prove two things: first, that the bodily injury was intended (it was not accidental); and second, that the injury was objectively sufficient to cause death.⁹⁶⁰

However, in practice, courts frequently revert to Section 304 Part I (intent to cause injury likely to cause death) or Part II (knowledge that act is likely to cause death) when a child dies from a severe beating. The rationale often employed is that the parent, guardian, or teacher "did not intend to kill" the child but merely intended to discipline them or acted in a sudden fit of anger.

This creates a dangerous "Single Blow" exemption for child killers. In numerous judgments, courts have held that a single blow inflicted in the "heat of passion" negates the intent required for murder, bringing the offense under Exception 4 to Section 300.⁹⁶¹

- **Case Law Analysis: State of U.P. v. Anurudh (2026) and Nandkumar v. State:** In recent rulings such as *Anurudh* (2026) and *Nandkumar*, courts have converted convictions from Section 302 to Section 304 Part I. The judicial reasoning relied on the fact that the incident occurred on the "spur of the moment" or involved a "single lathi blow,"

⁹⁵⁹ The Indian Penal Code, 1860, s. 300.

⁹⁶⁰ *Virsa Singh v. State of Punjab*, AIR 1958 SC 465.

⁹⁶¹ The Indian Penal Code, 1860, s. 300, Exception 4.

which was interpreted as a lack of premeditated intent to kill.⁹⁶²

- **The Chenda @ Chanda Ram Precedent:** In *Chenda @ Chanda Ram v. State of Chhattisgarh*, the Supreme Court dealt with a case where a simple quarrel over a trivial issue a cat being chased by a child led to a fatal assault. The Court's analysis shifted the focus to whether the accused *knew* the act was likely to cause death (Section 304 Part II) rather than *intending* to cause the fatal injury (Section 300 Clause 3).⁹⁶³

Critique of the "Heat of Passion" Defence in Child Cases

The application of Exception 4 (sudden fight/heat of passion) to cases involving adults killing children is doctrinally flawed for several reasons:

1. **Asymmetry of Power:** A "sudden fight" implies a degree of mutual combat or bilateral provocation. A child cannot "fight" an adult in any meaningful physical sense. When an adult strikes a child in anger, they are not engaging in a fight; they are exploiting a massive power disparity.⁹⁶⁴
2. **Physiological Vulnerability:** The "Single Blow" doctrine ignores the fragility of a child's body. A blow that might cause simple hurt to an adult can be instantly fatal to a child. Under Section 300 Clause 3, the offender is liable if they intend the *injury* that is sufficient to cause death. An adult who strikes a child's head with a lathi *intends* the injury, even if they hope the child survives. By downgrading this to Section 304, courts are implicitly ruling that the adult did not know the injury would be fatal, a presumption that

defies the "ordinary course of nature" regarding child physiology.

3. **Normalization of Violence:** By categorizing fatal child abuse as "culpable homicide" rather than "murder," the legal system signals that killing a child in a fit of rage is less culpable than a calculated homicide. This aligns with a patriarchal view of children as property or subjects of discipline, rather than rights-bearing individuals.

The *Anurudh* (2026) judgment is particularly illustrative of this confusion. While the Court recognized the need to protect the "child in conflict with law" and the "child in need of care," it highlighted a "conceptual gap" regarding the "child victim." The victim of fatal abuse falls into a void where the strict liability of murder is diluted by the "welfare" or "reformatory" approach usually reserved for juvenile offenders, paradoxically benefitting the adult aggressor.⁹⁶⁵

5.2 Judicial Trends: Interpretative Oscillations and Landmark Interventions

The judicial history of child protection in India is not a linear progression towards greater rights. Rather, it is characterized by an oscillation between conservative, literalist interpretations of penal statutes and progressive, purposive expansions of constitutional rights.

5.2.1 Redefining Violation: From *Sakshi* to *Satish*

The *Sakshi* Intervention (2004): The Critique of "Outdated" Law

The Supreme Court's judgment in *Sakshi v. Union of India* was a seminal moment that exposed the gross inadequacy of Section 375 of the IPC. The case arose from a Public Interest Litigation (PIL) filed by the NGO *Sakshi*, challenging the narrow definition of rape, which was strictly limited to peno-vaginal intercourse. The petitioner highlighted that this definition

⁹⁶² *Nandkumar @ Nandu Manilal Mudaliar v. State*, (2026) SCC OnLine SC [?]; See also *Jagrup Singh v. State of Haryana*, (1981) 3 SCC 616.

⁹⁶³ *Chenda @ Chanda Ram v. State of Chhattisgarh*, (2013) 12 SCC 110.

⁹⁶⁴ See V.S. Deshpande, "Nature of the Offence of Murder", 12 *Journal of the Indian Law Institute* 3 (1970).

⁹⁶⁵ *State of U.P. v. Anurudh*, Criminal Appeal No. [?] of 2026 (SC).

excluded heinous forms of child sexual abuse, such as oral or anal penetration.⁹⁶⁶

In *Sakshi*, the Supreme Court acknowledged that the existing definition was an "outdated" concept that viewed rape through the lens of "chastity" rather than bodily autonomy.⁹⁶⁷ However, the Court exercised judicial restraint, refusing to rewrite the IPC to include these acts as "rape," holding that such a substantive change was the prerogative of the legislature. This doctrinal pressure eventually catalyzed the *Criminal Law (Amendment) Act, 2013* and the enactment of POCSO.

The "Skin-to-Skin" Regression and Correction (2021)

If *Sakshi* highlighted the need for legislative change, the Bombay High Court's judgment in the *Satish* case (2021) highlighted the danger of regressive judicial interpretation. The High Court acquitted an accused under the POCSO Act on the grounds that groping a child's breast over her clothes did not constitute "sexual assault" because there was no direct "skin-to-skin" contact.⁹⁶⁸

The Supreme Court, in *Attorney General for India v. Satish*, swiftly overturned this verdict. The Court asserted that the "most important ingredient is the sexual intent, not skin-to-skin contact."⁹⁶⁹ This judgment reaffirmed the *purposive rule of interpretation*: statutes meant to protect vulnerable classes must be interpreted in a way that advances the remedy and suppresses the mischief.

5.2.2 The *Vishaka* Legacy: Extending Workplace Safety to Schools

A significant recent trend is the invocation of *Vishaka* principles to mandate safety mechanisms in educational institutions, effectively treating schools as "workplaces" for students in terms of their right to dignity and safety.⁹⁷⁰

A landmark development in this trajectory is the case of *Sukdeb Saha v. State of Andhra Pradesh* (2025/2026), where the Supreme Court addressed the rising tide of student suicides and harassment in coaching centers and schools. Citing the vacuum in student safety mechanisms similar to the pre-1997 workplace vacuum the Court exercised its powers under Article 32 to lay down "mental health guidelines" for educational institutions.⁹⁷¹ This represents a "horizontal expansion" of *Vishaka* taking a principle designed for employment law and applying it to education law.

5.2.3 The "Romantic Relationship" Conundrum

A chaotic and unresolved trend in POCSO jurisprudence is the treatment of "adolescent romance." The statutory age of consent in India is 18. This makes *any* sexual act with a person under 18 a strict liability offense (statutory rape), regardless of consent.

The Supreme Court has sent mixed signals. In recent rulings, it has stated that while a POCSO offense cannot be legally "compounded" (settled) like a property dispute, constitutional courts may use their inherent powers to quash FIRs to prevent the "criminalization of adolescence" and the destruction of the young couple's future.⁹⁷² This judicial ambivalence creates a system of "zip-code justice," where the fate of a 17-year-old boy involved with a 16-year-old girl depends largely on the presiding judge's personal philosophy.

5.3 Gaps in Implementation: The Administrative Failure

5.3.1 Police Insensitivity and the "Unfounded" Classification

Empirical studies indicate that police officers often act as unauthorized "gatekeepers" of justice. A qualitative study of sexual assault survivors reveals a recurring theme of "police insensitivity," where victims are subjected to blaming questions. Research indicates that police frequently code sexual assault reports as

⁹⁶⁶ *Sakshi v. Union of India*, AIR 2004 SC 3566.

⁹⁶⁷ *Id.*

⁹⁶⁸ *Satish Ragde v. State of Maharashtra*, 2021 SCC OnLine Bom 122.

⁹⁶⁹ *Attorney General for India v. Satish*, (2021) 5 SCC 545.

⁹⁷⁰ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁹⁷¹ *Sukdeb Saha v. State of Andhra Pradesh*, (2025) SCC OnLine SC.

⁹⁷² *See Ramji Lal Bairwa v. State of Rajasthan*, (2025) SCC OnLine SC.

"unfounded" based on their own extra-legal assessment of the victim's credibility.⁹⁷³

Furthermore, when the perpetrator is a family member, police often encourage "compromise" or "settlement" to preserve "family honor." This practice is illegal under Section 21 of POCSO, which imposes penalties for failure to report. By discouraging complaints, the police effectively abet the concealment of the crime.⁹⁷⁴

5.3.2 The Persistence of "Compromise" Culture

Despite the Supreme Court's clear ruling that heinous crimes like rape cannot be settled based on private compromise, the practice continues. In the case of *Rajeev Dagar v. State*, the Delhi High Court explicitly struck down a mediation agreement in a POCSO case, reiterating that justice in sexual offense cases is not a "ceremony" to be bypassed by private settlement.⁹⁷⁵ However, at the ground level, "panchayat compromises" force victims to turn hostile during trial, leading to the collapse of the case.

5.4 Comparative Critique: Retributive vs. Restorative Justice Models

5.4.1 The Indian Judiciary's Resistance to Restorative Justice

In India, "Restorative Justice" (RJ) is viewed with deep suspicion in the context of sexual offenses. The prevailing judicial view is that crimes against the body are crimes against society (*in rem*) and cannot be "restored" through apology or compensation.⁹⁷⁶ However, this rigid stance ignores the potential of RJ to aid *victim recovery*. Academic critiques suggest that the retributive process which involves aggressive cross-examination is often more damaging to the child than the crime itself (secondary victimization).⁹⁷⁷

5.4.2 The Barnahus Model: A Structural Contrast

The *Barnahus* model, originating in Iceland and adopted across Scandinavia, offers a compelling alternative. It is a "one-stop shop" where the police, prosecutor, child protection services, and medical professionals come together under one roof to serve the child.⁹⁷⁸

Critique: The Indian system fragments the child's experience. A child is dragged from the police station to a hospital, then to a magistrate, and finally to a special court. The *Barnahus* model centralizes these services. By conducting a single forensic interview that satisfies both investigative and therapeutic needs, the *Barnahus* minimizes re-traumatization.⁹⁷⁹ The *Anurudh* (2026) judgment hints at this need, noting that the "conceptual gap" in Indian law leaves child victims without the holistic care provided to juvenile offenders.

5.5 New Idea: Deepfake Technology's Challenge to POCSO and IPC Section 292

The advent of Generative AI and "Deepfake" technology presents an existential challenge to the current enforcement framework.

5.5.1 The Gap in Section 292 IPC and Section 67B IT Act

Section 292 of the IPC criminalizes the sale and distribution of obscene material. Section 67B of the *Information Technology Act, 2000* criminalizes publishing material depicting children in sexually explicit acts.⁹⁸⁰

The Challenge of the "Virtual" Victim AI can now generate hyper-realistic Child Sexual Abuse Material (CSAM) where the "child" depicted does not exist but is a synthetic creation. Furthermore, offenders use images of *real* children and graft them onto pornographic videos. This constitutes "virtual sexual assault," yet strict interpretations of POCSO (requiring

⁹⁷³ "Unfounded Sexual Assault: Women's Experiences of Not Being Believed by the Police", *Journal of Interpersonal Violence* (2021).

⁹⁷⁴ Kailash Satyarthi Children's Foundation, *supra* note 11.

⁹⁷⁵ *Rajeev Dagar v. State*, 2025 SCC OnLine Del

⁹⁷⁶ *State of M.P. v. Madanlal*, (2015) 7 SCC 681.

⁹⁷⁷ Tali Gal, *Child Victims and Restorative Justice: A Needs-Rights Model* (Oxford University Press, 2011).

⁹⁷⁸ Anna Kaldal et al., "Children's Houses – Barnahus: Today and in the Future" in *Child-friendly Justice* (Brill, 2015).

⁹⁷⁹ *Id.*

⁹⁸⁰ The Information Technology Act, 2000, s. 67B.

physical touch) may not cover these digital acts.⁹⁸¹

5.5.2 Forensic Admissibility under Bharatiya Sakshya Adhiniyam (BSA)

The new *Bharatiya Sakshya Adhiniyam, 2023* (BSA) requires certification for the admissibility of electronic evidence. Deepfakes are characterized by their virality; each transmission alters the file's hash value. Without a pristine chain of custody and hash value matching, courts are increasingly skeptical of digital evidence, often rejecting it as "unreliable".⁹⁸²

5.5.3 Technological Solutions: The Arms Race

To combat this, the Ministry of Electronics and Information Technology (MeitY) has funded "Project Saakshya" and C-DAC's "FakeCheck" tools. These initiatives aim to create indigenous forensic tools capable of detecting deepfakes by analyzing physiological signs like "blood flow" (photoplethysmography).⁹⁸³ The National Forensic Sciences University (NFSU) is also researching "Explainable AI" (XAI) to provide reasoned analysis for courts, moving beyond "black box" algorithms.⁹⁸⁴

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⁹⁸¹ "Navigating Deepfakes in Indian Criminal Law", 5 *Indian Journal of Integrated Research in Law* 1947 (2025).

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⁹⁸³ "MeitY funds two AI projects to detect fake media", *Hindustan Times* (Nov. 22, 2025).

⁹⁸⁴ National Forensic Sciences University, *Brochure on Forensic Hackathon* (2025).