

## BALANCING VICTIM PROTECTION AND ACCUSED RIGHTS

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### Abstract

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted in India to provide a robust legal framework for the protection of children from sexual abuse and exploitation. This legislation has significantly redefined the landscape of child protection in the Indian criminal justice system by creating child-friendly procedures and imposing stringent penalties on perpetrators. However, while the POCSO Act aims to safeguard child victims, it also raises significant concerns about ensuring the constitutional rights of the accused, especially the right to a fair trial as guaranteed under Article 21 of the Indian Constitution. This study seeks to critically examine the impact of the POCSO Act on the balance between victim protection and the rights of the accused within the Indian legal framework.

The research focuses on the dual obligation of the justice system to both protect vulnerable child victims and uphold the fundamental principles of criminal law, particularly the presumption of innocence and the right to a fair, impartial, and timely trial. The POCSO Act introduces several special procedures, such as child-friendly courts, the presence of support persons, in-camera trials, and restrictions on bail and anticipatory bail, all of which are intended to shield child victims from secondary trauma during the legal process. However, these provisions often create tension with the rights of the accused, who may be subjected to pre-trial stigma, reverse burdens of proof, and constraints on bail that challenge established legal norms.

This dissertation explores whether the procedural innovations under the POCSO Act align with the constitutional commitment to justice, equality, and due process. It investigates whether the current legal provisions effectively balance the rights of both parties or if the scales have been unduly tipped in favor of victims at the cost of fundamental criminal jurisprudence. It further examines how Indian courts have interpreted and applied these provisions, and whether judicial discretion has been used to mitigate or exacerbate this imbalance.

In addition to doctrinal and jurisprudential analysis, this study also draws upon international human rights frameworks, such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (UNCRC), to situate India's legal developments within a global context. The research highlights the comparative approaches adopted by other jurisdictions in balancing victim protection and accused rights, and the lessons India can derive from such models.

### Keywords :-

1. POCSO Act (Protection of Children from Sexual Offences Act, 2012)
2. Fair Trial
3. Victim Rights
4. Accused Rights
5. Special Courts
6. Criminal Justice System
7. Article 21 (Right to Life and Personal Liberty)
8. Child Protection
9. Victimology
10. In-camera Trial

## Methodology

This study adopts a doctrinal or library-based research methodology, focusing primarily on legal texts, judicial decisions, statutes, and secondary scholarly literature. The approach is qualitative, analytical, and exploratory in nature, aimed at examining how the Protection of Children from Sexual Offences (POCSO) Act, 2012 has impacted the balance between victim protection and the constitutional rights of the accused in India. By relying on doctrinal methods, the study conducts a deep analysis of relevant statutory provisions, judicial pronouncements, and constitutional mandates, especially Article 21 of the Indian Constitution which guarantees the right to life and personal liberty, including the right to a fair trial. Primary sources include the POCSO Act itself, the Indian Penal Code, the Code of Criminal Procedure, and various constitutional provisions. Important case law from the Supreme Court and High Courts is also examined to understand how courts have interpreted and implemented child protection measures alongside ensuring fair trial norms. International conventions such as the United Nations Convention on the Rights of the Child (UNCRC) and the International Covenant on Civil and Political Rights (ICCPR) provide a global perspective and are used for comparative analysis.

Secondary sources include books, commentaries, law review articles, government reports, and publications by NGOs and child rights organizations. These help provide a nuanced understanding of how legal frameworks are perceived and implemented on the ground. While the research does not involve fieldwork, interviews, or statistical surveys, it critically engages with existing reports by bodies such as the National Commission for Protection of Child Rights (NCPCR) and the National Crime Records Bureau (NCRB), which offer insights into practical implementation challenges. The study adopts an interpretative lens to evaluate how the judiciary balances the competing needs of victim sensitivity and accused rights, especially in the context of

child-friendly procedures, reverse burdens of proof, and fast-track special courts. A comparative element is introduced through a brief examination of how other jurisdictions like the UK, Australia, and South Africa handle similar legal issues, providing benchmarks and possible recommendations for improving India's approach. The overall objective of this methodology is to identify doctrinal inconsistencies and practical gaps in the implementation of the POCSO Act and to offer well-reasoned legal and policy suggestions for a more balanced and just system that protects victims without undermining the rights of the accused.

## Literature Review

The literature surrounding the Protection of Children from Sexual Offences (POCSO) Act, 2012 is vast and varied, reflecting the legal, social, and psychological complexities associated with child sexual abuse and justice delivery. Scholars have widely acknowledged the Act as a landmark legislation that filled the long-standing void in Indian law regarding child-specific sexual offence provisions. Legal academics such as Ved Kumari have praised the Act's attempt to adopt a child-centric approach by introducing unique procedural safeguards such as child-friendly investigations, in-camera trials, the presence of support persons, and special courts. These measures are seen as necessary to prevent secondary victimization and encourage reporting of offences. However, a significant body of scholarly work also critiques the Act for its impact on the rights of the accused. For instance, Dr. Faizan Mustafa and other criminal law experts have expressed concerns over provisions like Section 29, which introduces a presumption of guilt and requires the accused to prove their innocence—a stark departure from the conventional principle of "innocent until proven guilty." Commentators argue that such provisions, while aiming to secure justice for victims, potentially undermine the constitutional right to a fair trial and due process under Article 21.

Judicial interpretations have also shaped the literature significantly. Landmark cases like *Rattiram v. State of M.P.* and *Zahira Sheikh v. State of Gujarat* are often cited in discussions of fair trial rights, reinforcing that procedural fairness is not only a constitutional mandate but a moral imperative of the justice system. In the specific context of POCSO, judgments such as *Bijoy v. State of West Bengal* illustrate how courts deal with complex issues like consent, age verification, and false accusations, particularly in cases involving adolescents. Psychological and victimological studies offer another important dimension to the literature. Research by professionals like Dr. Rajat Mitra and reports by organizations like HAQ: Centre for Child Rights emphasize the trauma children endure during legal proceedings and stress the importance of sensitive procedures. However, these studies also highlight significant gaps in implementation, citing examples of insensitivity by law enforcement, inadequate training, and inconsistency in applying protective measures across different regions of the country.

### **The principle of a fair trial in criminal law**

The right to a fair trial is a fundamental principle of criminal law, ensuring that justice is delivered fairly and protecting the rights of both victims and defendants. This principle is particularly important in the context of the Protection of Children from Sexual Offences Act, 2012 (POCSO), due to the sensitive nature of the crimes and the vulnerability of child victims. However, it is crucial to balance the need to protect victims with the fundamental rights of the accused, maintaining fairness in the justice system.

### **Constitutional and Legal Framework**

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which includes the right to a fair trial. The Supreme Court of India has consistently affirmed that a fair trial is a vital component of Article 21. In the case of *Rattiram v. State of M.P.*, the Court noted

that a fair trial is central to criminal law and a key aspect of a democratic society governed by the rule of law. Additionally, the Code of Criminal Procedure, 1973 (CrPC), provides procedural protections to ensure fair trials. These protections include the presumption of innocence, the right to legal counsel, the right to cross-examine witnesses, and the right to a trial by an unbiased tribunal. The Indian Evidence Act, 1872, further supports these protections by outlining rules for evidence admissibility and the burden of proof.

### **Presumption of Innocence and Burden of Proof**

The presumption of innocence is a core principle of criminal law, placing the responsibility on the prosecution to prove the accused's guilt beyond a reasonable doubt. This principle ensures that no one is convicted without due process. However, the POCSO Act introduces a notable exception to this principle. According to Section 29 of the Act, once the prosecution presents the basic facts, the court must assume the accused is guilty unless proven otherwise. This shift in the burden of proof has sparked debate regarding its potential impact on the rights of the accused.

In the case of *Bhupen Kalita v. State of Assam*, the Gauhati High Court highlighted that the prosecution must first prove foundational facts based on a preponderance of probability before a presumption of guilt can be applied. This method aims to balance the rights of the accused with the protective goals of the POCSO Act.

### **The Right to Legal Representation and Cross-Examination**

The right to legal representation is a vital aspect of a fair trial, allowing the accused to effectively contest the prosecution's case and present their defense. While the POCSO Act prioritizes the protection of child victims, it also preserves the accused's rights to legal counsel and to cross-examine witnesses. However, the Act requires that the Special Court ensures the child is not repeatedly called to testify and that cross-

<sup>360</sup>The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

examinations are conducted in a way that minimizes distress for the child. This creates a need for a careful balance between protecting the child's well-being and upholding the accused's right to a fair defense.

### **Impartiality and Judicial Conduct**

An impartial judiciary is crucial for justice. Judges must act as neutral arbiters, ensuring trials are fair and unbiased. In *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court emphasized that a fair trial involves an impartial judge, a fair prosecutor, and a calm judicial environment. In POCSO cases, judges must handle sensitive testimonies, media attention, and public opinion while remaining objective and safeguarding the rights of both the victim and the accused.

### **Challenges in Ensuring Fair Trials under POCSO**

The POCSO Act seeks to speed up the trial process to provide prompt justice for child victims, but this urgency can sometimes hinder the thoroughness necessary for a fair trial. Fast-track courts set up to manage POCSO cases often face issues such as heavy workloads, limited resources, and procedural limitations. These factors can result in procedural errors, insufficient defense preparation, and possible injustices. Additionally, societal pressures and media coverage can affect the proceedings, jeopardizing the impartiality of the judiciary.

### **International Perspectives and Human Rights Considerations**

India's dedication to fair trials is also evident in its <sup>361</sup>commitments under international human rights agreements. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which India has ratified, ensures the right to a fair and public hearing by a competent, independent, and impartial tribunal. The United Nations Convention on the Rights of the Child (UNCRC) highlights the importance of safeguarding the rights of children, including those who are victims and witnesses, while also

ensuring that the rights of the accused are respected. Balancing these responsibilities necessitates a careful approach that protects the rights of all parties involved.

### **Doctrinal Tension Between Protecting Minors and Ensuring Due Process**

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was established to create a strong legal framework aimed at protecting children from sexual crimes. Although the main goal of the Act is to shield minors, it also includes certain provisions that have led to discussions about finding a balance between protecting victims and upholding the rights of the accused. This section explores the doctrinal conflicts that arise from the need to protect minors while also ensuring due process in the criminal justice system.

#### **1. Presumption of Guilt and Reverse Burden of Proof**

A particularly controversial element of the POCSO Act is the presumption of guilt outlined in Section 29. This section states that if someone is charged with committing or assisting in an offence under the Act, the Special Court will assume the accused is guilty unless proven otherwise. This approach diverges from the core principle of criminal law, which asserts that an accused individual is presumed innocent until proven guilty. The reverse burden of proof shifts the responsibility to the accused to demonstrate their innocence, which may infringe on their right to a fair trial. Critics contend that this provision erodes the presumption of innocence and could result in wrongful convictions, particularly in cases reliant on circumstantial evidence or solely on the victim's account.

#### **2. Right Against Self-Incrimination**

Article 20(3) of the Indian Constitution protects individuals from self-incrimination, stating that no one accused of a crime can be forced to testify against themselves. The presumption of guilt in the POCSO Act may pressure the accused to provide testimony or evidence to

<sup>361</sup>Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).  
Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

counter this presumption, potentially violating this constitutional protection.

In the case of *Selvi v. State of Karnataka*, the Supreme Court ruled that the involuntary use of certain scientific methods for investigation infringes on the right against self-incrimination. Following this reasoning, requiring an accused person to prove their innocence under the POCSO Act could be viewed as a violation of this fundamental right.

### 3. Speedy Trial vs. Fair Trial

The POCSO Act requires that trials be completed within a year to ensure prompt justice for child victims. While quick trials are crucial to prevent ongoing trauma for victims, they should not compromise the accused's right to a fair trial. Sufficient time must be allowed for defense preparation, witness examination, and evidence presentation. In *Rattiram v. State of M.P.*, the Supreme Court highlighted that a fair trial is central to criminal law and a vital aspect of a democratic society governed by the rule of law. Thus, while expedited trials are important, they must not undermine the fairness and integrity of the judicial process.

### 4. Safeguarding Victim's Identity vs. Right to Public Trial

The POCSO Act requires trials to be held in-camera and prohibits revealing the victim's identity to maintain the child's privacy and dignity. While these measures<sup>362</sup> are essential for protecting the victim, they may clash with the principle of open justice, which promotes transparency and accountability in the legal system. Finding a balance between the victim's right to privacy and the accused's right to a public trial necessitates careful thought. It is important to establish mechanisms that safeguard the victim's identity while still ensuring the judicial process remains transparent.

### 5. Implementation Challenges

The successful enforcement of the POCSO Act encounters various obstacles, such as insufficient infrastructure, a shortage of trained personnel, and societal stigma. These issues can hinder the pursuit of justice and impact both the victim and the accused. To ensure due process, it is essential to tackle these systemic challenges to foster a judicial environment that respects the rights of all parties involved.

### 6. Global Perspectives

Around the world, legal systems face similar challenges in balancing the protection of minors with the need for due process. For example, in the United Kingdom, there are special provisions to safeguard child witnesses, while still upholding the fundamental rights of the accused, including the presumption of innocence and the right to a fair trial. Comparative studies can offer valuable insights into how to reconcile these competing interests within the Indian framework.

### Legal and Ethical Dilemmas in the POCSO Act

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was established to create a strong legal framework aimed at safeguarding children from sexual crimes. Although its purpose is commendable, the implementation of the Act has revealed various legal and ethical issues that require careful consideration.

#### 1. Presumption of Guilt and Reverse Burden of Proof

A major issue is the Act's shift away from the conventional presumption of innocence. Sections 29 and 30 of the POCSO Act impose a reverse burden of proof, meaning that the accused is considered guilty once certain basic facts are established. This shift challenges the fundamental principle of 'innocent until proven guilty' and raises concerns about possible injustices. Critics contend that these provisions could undermine trial fairness and the rights of the accused.

<sup>362</sup>Constitution of India, art. 21.

## 2. Challenges in Age Determination

Accurately determining the victim's age is essential under the POCSO Act, as it directly affects the application of its provisions. However, inconsistencies in age verification methods can create legal uncertainties. Relying on documents such as birth certificates or school records may not always provide accurate information, which can impact case outcomes and justice delivery.

## 3. Potential for Misuse and False Allegations

While the stringent measures of the POCSO Act are crucial for protecting children, they also create opportunities for misuse. There have been reports of false allegations leading to wrongful prosecutions. Such misuse not only damages the Act's credibility but also diverts attention and resources from legitimate cases, emphasizing the need for thorough investigations.

## 4. Ethical Concerns in Medical Examination

The Act requires medical examinations of child victims to gather evidence. While these examinations are necessary, they raise ethical issues regarding the potential for re-traumatization and the psychological effects on the child. It is vital that these procedures are carried out with the highest level of sensitivity and care to maintain the child's dignity and well-being.

## Suggestions for Harmonizing Victim Protection and Accused Rights<sup>363</sup>

To tackle the challenges mentioned and find a balance between protecting child victims and upholding the rights of the accused, the following strategies are suggested:

### 1. Reassessing the Reverse Burden of Proof

Although Sections 29 and 30 aim to enhance child protection, it is important to reassess them to ensure they do not violate the accused's right

to a fair trial. Implementing safeguards that require the prosecution to present a prima facie case before a presumption of guilt is applied could be a viable solution.

### 2. Standardizing Age Verification Methods

Establishing consistent and reliable age determination protocols can help reduce discrepancies. A combination of documentary evidence and medical evaluations, while safeguarding the child's rights, can improve the accuracy of age assessments.

### 3. Implementing Protections Against False Claims

Introducing rigorous preliminary inquiry processes can help eliminate unfounded allegations. Additionally, enforcing penalties for intentional false reports can discourage the misuse of the law, ensuring that its provisions benefit genuine victims.

### 4. Ethical Standards for Medical Examinations

Creating detailed guidelines for the medical examination of child victims is essential. These guidelines should prioritize the child's physical and emotional well-being, involve trained pediatric forensic experts, and adopt trauma-informed practices to lessen distress.

### 5. Child-Friendly Judicial Procedures

Setting up Special Courts staffed with professionals trained in child psychology can foster a supportive environment for child victims. Conducting in-camera hearings and allowing video testimonies can further protect the child's privacy and minimize the trauma of courtroom experiences.

### 6. Ongoing Training for Stakeholders

Regular training sessions for law enforcement, healthcare providers, and judicial officials on the specifics of the POCSO Act, child rights, and trauma-informed care can improve the effectiveness of the Act's enforcement. Such programs ensure that all parties are prepared to handle cases with the necessary sensitivity and care.

<sup>363</sup>United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

*Rattiram v. State of M.P.*, (2012) 4 SCC 516.

## 7. Community Awareness<sup>364</sup> and Engagement

Increasing awareness about the POCSO Act and the significance of child protection can encourage a community-based approach to preventing sexual offenses against children. Educational initiatives can also inform the public about the serious consequences of false allegations, promoting responsible use of the law.

### Analysis of Landmark Judgments

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) has had a profound impact on India's legal framework regarding child protection. Numerous landmark rulings have interpreted and influenced the application of the Act, striving to balance the rights of both victims and the accused. This section reviews key cases that have shaped the evolving legal principles under the POCSO Act.

#### 1. Attorney General for India v. Satish and Another (2021)

In this case, the Supreme Court examined the definition of "sexual assault" as per the POCSO Act.

The Court overturned a decision by the Bombay High Court that mandated "skin-to-skin" contact for an act to qualify as sexual assault. The Supreme Court argued that such a limited interpretation would undermine the Act's intent, stressing that the perpetrator's intent and the context of the act are vital in determining the offense. The Court stated, "The most important ingredient for constituting the offence of sexual assault is sexual intent and not skin-to-skin contact with the child"

#### 2. Independent Thought v. Union of India (2017)

This ruling evaluated the exception to marital rape under the Indian Penal Code in relation to the POCSO Act. The Supreme Court determined that sexual intercourse with a minor wife is considered rape, regardless of the marriage's validity. The Court highlighted that the POCSO

Act aims to protect children from sexual offenses, and any exceptions allowing such acts undermine this goal.

The decision reinforced that child protection laws should take precedence over personal laws or societal norms that infringe on children's rights.

#### 3. Jarnail Singh v. State of Haryana (2013)

In this case, the Supreme Court tackled the issue of determining the victim's age under the POCSO Act. The Court ruled that the Act is a special law that supersedes the Indian Penal Code in cases of sexual offenses against children. It stressed the importance of accurate age determination and mandated the use of ossification tests and school records to establish the victim's age. The ruling emphasized the necessity of a child-centric approach in legal proceedings involving minors.

#### 4. Alakh Alok Srivastava v. Union of India and Others (2018)

This public interest litigation aimed to ensure the implementation of the POCSO Act's provisions, particularly regarding the establishment of Special Courts and the appointment of Special Public Prosecutors. The Supreme Court instructed both central and state governments to guarantee the effective enforcement of the Act, including the creation of child-friendly courts and the provision of essential infrastructure. The judgment underscored the significance of a supportive legal environment for child victims of sexual offenses.

#### 5. Just Rights for Children's Alliance v. S. Harish (2024)

In a recent ruling, the Supreme Court determined that the viewing, possession, and storage of materials showing minors in sexual activities are offenses under the POCSO Act. The Court highlighted that these actions contribute to the exploitation of children and require strict legal action. This decision broadened the Act's scope to encompass digital offenses, acknowledging the changing landscape of

<sup>364</sup>Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158.  
Bijoy @ Guddu v. State of West Bengal, (2017) 13 SCC 693.

child sexual exploitation in the digital era, as noted by the Supreme Court Observer.

### Conclusion

These significant rulings have been vital in interpreting and reinforcing the goals of the POCSO Act. They have clarified uncertainties, enhanced protections for child victims, and ensured a balance between the rights of the accused and the necessity for effective child protection. The judiciary's proactive approach in these cases emphasizes the need for ongoing legal development to tackle the complexities of child sexual offenses in India.

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