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Between Protection and Persecution: A Critical Examination of the Evidentiary Presumptions, Mandatory Reporting, and Procedural Stringency of the POCSO Act, 2012

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act' or 'the Act') is one of the most impactful legislations in Indian jurisprudence in the realm of child rights and sexual offence law in the post-independence era. It was enacted to meet India's obligations under the United Nations Convention on the Rights of the Child, 1989, and provided an independent criminal procedural framework for child victims. The Act makes a large number of acts in relation to persons under the age of 18 years an offence, provides for sentences, shifts the burden of proof in certain cases, and establishes special courts for fast-track trials. Despite its noble intention of safeguarding children, the POCSO Act has been subject to persistent scholarly and judicial scrutiny on account of its procedural rigidity, its potential for misuse, the possibility of innocent people being imprisoned, and its chilling effect on consensual adolescent intimacy. This paper critically examines the basic structure of the Act, the evidentiary presumptions under Sections 29 and 30, the mandatory reporting requirement under Section 19, the trial process under Sections 31 to 38, and the special court mechanism under Section 28, and offers a comparative analysis. The paper examines the statute's intent and its constitutional and international foundations through the prism of key judicial rulings, legislative history, and comparative models from the United Kingdom and the United States, and concludes that the statute is constitutionally sound and internationally grounded, but that its procedures are too rigid and require calibrated legislative change. Recommendations are provided regarding the development of a graduated age-of-consent scheme, judicial control of mandatory reporting requirements, and the implementation of a statutory defence to reduce false prosecution.

Keywords: POCSO Act 2012, Child Sexual Offences, Reverse Burden of Proof, Special Courts, Mandatory Reporting, Comparative Child Protection Law.

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I. INTRODUCTION

Sexual abuse of children is one of the most serious forms of inhuman treatment that a legal system is expected to tackle. In India, the legislative reaction to this crisis resulted in the enactment of an all-encompassing legislation, the Protection of Children from Sexual Offences Act, 2012,¹ which replaced the disjointed and gender-specific provisions of the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973. The enactment was based on the constitutional provisions of Articles 15(3) and 39(f) of the Constitution of India, which require affirmative action by the State for the protection of children, and internationally on the UN Convention on the Rights of the Child (UNCRC),² to which India has been a signatory since 1992.

The data released by the National Crime Records Bureau (NCRB) consistently shows a distressing trend of increasing child sexual offences reported in each State of India, with cases under the POCSO Act rising from 8,904 in 2014 to around 53,874 in 2021.³ These statistics, sobering in themselves, fail to fully reflect the dark figure of abuse, which is driven by social stigma, institutional apathy, and structural weaknesses in child protection governance.

The Act's path through the courts has, however, brought to light several sources of conflict that purely protective legislation can create. The combination of Section 29 (reversal of the burden of proof), Section 23 (an almost absolute prohibition on media reporting), and Section 19 (mandatory reporting with criminal liability for failure to report) has produced a system that has been both hailed as a victim-centred approach and attacked as potentially leading to wrongful convictions and the stifling of legitimate intimacy among youth. The Supreme Court's decisions in *Nipun Saxena v. Union of India*,⁴ *Independent Thought v. Union of India*,⁵ and *Alakh Alok Srivastava v. Union of India*⁶ reveal a judicial system struggling to come to terms with the extraordinary sweep of the Act.

This paper sits in this contested scholarly and judicial arena. It assumes that child protection is a non-negotiable constitutional and international duty, and recognises that procedural overreach, even in the service of a child protection duty, can lead to legal consequences inconsistent with the principles of due process, proportionality, and the presumption of innocence.

¹ Protection of Children from Sexual Offences Act, No. 32 of 2012 (India).

² Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

³ NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2021, at tbl. 5A.1 (2022).

⁴ *Nipun Saxena v. Union of India*, (2019) 2 S.C.C. 703.

⁵ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800.

⁶ *Alakh Alok Srivastava v. Union of India*, (2018) 17 S.C.C. 291.

A. Research Questions

This paper is guided by three research questions. First, to what extent does the reversal of the burden of proof under Sections 29 and 30 of the POCSO Act conflict with the right to a fair trial guaranteed under Article 21 of the Constitution of India and international human rights norms? Second, does the mandatory reporting obligation under Section 19 of the POCSO Act, and the criminal liability attached to non-reporting under Section 21, adequately balance child welfare imperatives against the risk of false or coerced reporting? Third, how does the procedural architecture of the POCSO Act compare with analogous legislative frameworks in the United Kingdom and the United States, and what lessons may be drawn for legal reform in India?

B. Hypothesis

While the POCSO Act, 2012 constitutes a necessary and constitutionally valid legislative framework for the protection of children, its procedural stringency, particularly the unqualified reversal of the burden of proof, the absolute mandatory reporting obligations, and the absence of a graduated age-of-consent framework, creates structural conditions that disproportionately expose accused persons to wrongful conviction. This procedural rigidity fails to adequately distinguish between predatory conduct and consensual adolescent relationships, thereby warranting targeted doctrinal and legislative reform.

C. Research Objectives

This paper pursues three objectives. The first is to examine the constitutionality, scope, and judicial interpretation of the evidential presumptions under Sections 29 and 30 of the POCSO Act in light of Article 21 of the Constitution and the UNCRC. The second is to critically assess the mandatory reporting regime under Section 19 and the trial procedure mechanism under Sections 28 to 38, identifying structural deficiencies and their consequences for the accused, the child victim, and the criminal justice process. The third is to undertake a comparative analysis of the POCSO Act against child sexual offence legislation in the United Kingdom and the United States, and to formulate evidence-based recommendations for legislative and policy reform in India.

D. Research Methodology

This paper adopts a predominantly doctrinal methodology, supplemented by comparative legal analysis. Primary sources, including the POCSO Act, 2012, as amended in 2019, the Indian Constitution, judicial decisions of the Supreme Court and High Courts, Law Commission Reports, and international conventions, form the evidentiary spine of the inquiry. The comparative dimension draws on the Sexual Offences Act, 2003 (UK), the Youth Justice and

Criminal Evidence Act, 1999 (UK), and the PROTECT Act, 2003 (US), as well as the General Comments of the UN Committee on the Rights of the Child.

The comparative method employed is that of functionalism, examining the functions that analogous legislative provisions serve in different jurisdictions, as formulated by Zweigert and Kötz,⁷ rather than transplant theory, given the distinct constitutional context in which the POCSO Act operates.

E. Literature Review

The past ten years since the enactment of the POCSO Act have seen a significant amount of scholarly work on the Act. In one of the earliest and most comprehensive empirical studies of the implementation of the Act, Vrinda Grover, Priya Pillai, and associates reported on systemic failures in the establishment and functioning of special courts, under-utilisation of support persons provided under Section 39, and non-compliance by the police with child-sensitive recording procedures.⁸ Their study found a significant disconnect between the “normative aspirations” of the Act and its “operational reality,” a finding confirmed by many subsequent studies.

In his authoritative study of Indian sexual offence law, Mrinal Satish highlights the tension in the statutory rape provision of the IPC, in which an absolute age of consent is set without taking into account the concept of adolescent autonomy, and shows how the wholesale criminalisation of consensual adolescent sexual activity under the POCSO Act raises serious concerns of proportionality in the light of constitutional law.⁹ A striking example of such concerns in a judicial context was the Madras High Court’s judgment in *Vijayalakshmi v. State* (2021),¹⁰ where the court noted that a strict interpretation of the POCSO Act applied to a consensual adolescent relationship could lead to unjust results that do not reflect the legislative intent.

Internationally, the extensive commentary prepared by Sharon Detrick on the UNCRC¹¹ and General Comment No. 13 of the UN Committee on the Rights of the Child¹² make clear that the obligations of child protection under international law call for both substantive criminalisation

⁷ KONRAD ZWIGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 34 (Tony Weir trans., 3d ed. 1998).

⁸ VRINDA GROVER, PRIYA PILLAI & MANJIMA MAJUMDAR, POCSO ACT: A REPORT ON THE STATUS OF IMPLEMENTATION (2017).

⁹ MRINAL SATISH, DISCRETION, DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA 212–18 (2017).

¹⁰ *Vijayalakshmi v. State*, CrI. A. No. 587 of 2021 (Madras H.C. 2021).

¹¹ SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 289 (1999).

¹² Comm. on the Rights of the Child, *General Comment No. 13 (2011): The Right of the Child to Freedom from All Forms of Violence*, U.N. Doc. CRC/C/GC/13 (2011).

and procedurally fair adjudication, a duality that the architecture of the POCSO Act does not always capture. The mandatory reporting literature in comparative legal scholarship, including the cross-jurisdictional study by Mathews and Bross,¹³ shows that absolute mandatory reporting regimes without a professional discretion clause have high rates of unsubstantiated reports, which impose an additional burden on investigative agencies and can cause distress to the falsely accused.

The paper's discussion of Sections 29 and 30 is informed by the scholarship on evidential presumptions in criminal law, especially the work of Andrew Ashworth and Meredith Blake¹⁴ on the presumption of innocence in English law. Ashworth's submission that 'express reverse onus' clauses should be subjected to a 'rigorous proportionality analysis' is particularly compelling in the POCSO context, because the presumption of guilt arises when only the age of the complainant and the fact of sexual contact are established. Existing scholarship is illuminating, but it has not fully engaged with a comparative approach that explores the procedural mechanisms of the POCSO Act against the UK and US legislative frameworks, nor has it considered how those mechanisms are proportionate to the Constitution.

II. LEGISLATIVE GENESIS AND CONSTITUTIONAL FOUNDATIONS OF THE POCSO ACT

Before the enactment of the POCSO Act, child sexual abuse in India was governed by insufficient and, in some significant ways, discriminatory provisions. The definition of rape in Section 375 of the Indian Penal Code, 1860 was framed in a manner that did not take into account that rape could be committed against a male victim, and overlapped only marginally with the offence of outraging modesty under Section 354, which was geared towards adults and was altogether inappropriate to the evidentiary and psychological aspects of child sexual abuse. The Law Commission of India, in its 207th Report of 2008,¹⁵ specifically recommended a comprehensive law on sexual offences against children, highlighting that there was neither adequate definitional clarity nor victim-sensitive procedural safeguards in the law then in force. The POCSO Act was passed as Act No. 32 of 2012 on 19 June 2012 and came into force on 14 November 2012. It is based on several constitutional provisions: Article 15(3), which authorises Parliament to make special provision for women and children; Article 39(f), which obligates

¹³ Ben Mathews & Donald C. Bross, *Mandated Reporting Is Still a Policy With Reason: Empirical Evidence and Philosophical Grounds*, 32 CHILD ABUSE & NEGLECT 511 (2008).

¹⁴ Andrew Ashworth & Meredith Blake, *The Presumption of Innocence in English Criminal Law*, 1996 CRIM. L. REV. 306, 311.

¹⁵ LAW COMM'N OF INDIA, REPORT NO. 207: PROPOSAL FOR LEGISLATION ON CRIMES AGAINST CHILDREN (2008).

the State to protect children from exploitation; and Article 21, which has been read by the Supreme Court to extend to the right of a child to live with dignity and to be protected from sexual violence.¹⁶ The POCSO Amendment Act of 2019¹⁷ further enhanced the punishment regime, introducing the offence of ‘aggravated penetrative sexual assault’ on a child under twelve years, for which the death penalty is an optional punishment, and creating new offences relating to child pornography.

Section 2(d) uses a bright-line definition of ‘child’, anyone under eighteen years of age, without making any distinction between the various developmental stages of childhood, and this aspect of the statute’s application is one of its most challenged features.

III. THE ARCHITECTURE OF EVIDENTIARY PRESUMPTIONS: SECTIONS 29 AND 30

Perhaps the most doctrinally provocative provisions of the POCSO Act are Sections 29 and 30. Where a person is charged with committing, abetting, or attempting to commit any of the offences specified in Sections 3, 5, 7, or 9, the Special Court shall presume, under Section 29, that he committed or abetted or attempted to commit the offence unless the contrary is proved. Section 30 further states that where a question arises whether the accused had the necessary mens rea to commit such an offence, the Special Court shall presume that the accused possessed such a culpable mental state. These provisions are statutory exceptions to the fundamental principle of criminal law enshrined in *Woolmington v. Director of Public Prosecutions*,¹⁸ and their constitutionality rests on the principles of proportionality engaged by Articles 14 and 21 of the Indian Constitution.

In *State of Karnataka v. Shivanna*,¹⁹ the Supreme Court reiterated the seriousness of child sexual abuse and found the special procedure under the POCSO Act to be constitutional. The constitutionality of statutory reverse onus clauses was, however, most perceptively examined by the Supreme Court in *Noor Aga v. State of Punjab*,²⁰ where the Court, considering an analogous reverse onus clause in the NDPS Act, held that while Parliament has the legislative competence to shift the onus, the presumption thus created must be rebuttable and must have a rational nexus with the mischief sought to be remedied. The Supreme Court has yet to give a conclusive answer to whether the POCSO presumption meets this proportionality test, and the issue remains a live doctrinal debate.

¹⁶ INDIA CONST. arts. 15(3), 21, 39(f).

¹⁷ Protection of Children from Sexual Offences (Amendment) Act, No. 25 of 2019 (India).

¹⁸ *Woolmington v. DPP*, [1935] A.C. 462 (H.L.) (appeal taken from Eng.).

¹⁹ *State of Karnataka v. Shivanna*, (2014) 8 S.C.C. 913.

²⁰ *Noor Aga v. State of Punjab*, (2008) 16 S.C.C. 417.

The situation is exacerbated by the statutory wording of Section 29, which generates the presumption upon proof of the complainant's status as a child and the commission of a prescribed act, rather than upon proof that the accused is guilty of the allegation. Subjecting the defence to the burden of establishing innocence, rather than disproving a particular factual allegation, places an extraordinary burden on the defence, and this will often be the case where, as here, the prosecution's evidence is largely the child's evidence. In *Libnus v. State of Maharashtra*,²¹ the Bombay High Court considered the meaning of 'sexual intent' under Section 7, an exercise that bears on the doctrinal flexibility of the mens rea presumption under Section 30 and how it may be interpreted.

A comparative perspective is instructive. Unlike the POCSO Act, the Sexual Offences Act, 2003 (UK)²² does not contain absolute reverse onus provisions. Section 75 of the UK Act provides for 'evidential presumptions' which only alter the evidential burden, not the persuasive burden, on the accused if certain circumstantial conditions are proved by the prosecution. This graduated approach, in which the final burden to prove guilt lies with the prosecution and the burden to rebut is lighter for the defence in certain cases, is a more proportionate model than the POCSO scheme. Likewise, there is no statutory rebuttal of the presumption of innocence for a child sexual offence under the PROTECT Act, 2003 (US),²³ which requires the prosecution to affirmatively discharge its constitutional duties under the Fifth and Fourteenth Amendments.

The normative arguments for reform of Sections 29 and 30 thus appear persuasive. A provision that shifts the evidentiary and persuasive burden upon the establishment of mere threshold facts, without any corroborating circumstance, sits at the very edge of constitutional proportionality and ought to be reorganised to avoid the very wrongful convictions that the justice system is meant to prevent.

IV. MANDATORY REPORTING: SECTION 19 AND THE PENAL CONSEQUENCES OF NON-COMPLIANCE

Under Section 19 of the POCSO Act, there is a universal obligation to report an offence: any person who has knowledge that an offence has been committed, or who apprehends that such an offence is likely to be committed, must report the matter to the Special Juvenile Police Unit or the local police. Section 21 stipulates penalties for non-compliance, including imprisonment of up to six months, a fine, or both. This broad regime, which applies to all and not merely to

²¹ *Libnus v. State of Maharashtra*, 2021 SCC OnLine Bom 66.

²² Sexual Offences Act 2003, c. 42, §§ 75–76 (UK).

²³ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, 117 Stat. 650.

professionals, reflects a legislative intent that the systemic under-reporting of child sexual abuse is itself a public harm to be tackled through criminal sanctions.

In comparative literature, the legitimacy of mandatory reporting as an instrument for child protection is well established. Mathews and Bross show in their cross-jurisdictional study that jurisdictions with strong mandatory reporting laws have higher rates of abuse detection, enabling earlier intervention and minimising harm to victims.²⁴ The UN Committee on the Rights of the Child, in General Comment No. 13, explicitly supports the use of mandatory reporting as part of a comprehensive national child protection system, but warns that it must be supported by adequate investigative resources, victim support systems, and measures to prevent the reporting system from being misused.²⁵ This last concern is not adequately addressed by the POCSO Act.

One of the key challenges in the POCSO regime is the absence of a professional discretion clause. Section 19 places the responsibility on ‘any person’ who has ‘knowledge or apprehension’ of an offence, unlike the Children Act, 2004 (UK),²⁶ which allows professionals to exercise independent judgment on whether a child is ‘at risk’ before the reporting duty is triggered. The term ‘apprehended’ is also rather wide: a teacher who notices that a student is behaving unusually, a counsellor who hears a disclosure in confidence, or a medical professional who observes physical signs of abuse all reasonably fall within the scope of Section 19, without regard to their professional judgment about the likelihood, nature, or severity of the alleged abuse.

In *Nipun Saxena v. Union of India*,²⁷ the Supreme Court examined the important issue of protecting the identity of child victims, holding that the name, address, school, or any particular that may lead to the identification of the child should not be disclosed in any report or judicial proceeding. The Court’s finding that re-traumatisation is a systemic risk indicates a judicial sensitivity to the psychological aspects of a mandatory reporting requirement. The Court did not, however, consider the structural issue of the absolute nature of the reporting requirement, which is unaccompanied by any exemption for professional discretion, or whether that absolute character is constitutionally and normatively appropriate.

²⁴ Mathews & Bross, *supra* note 13.

²⁵ General Comment No. 13, *supra* note 12.

²⁶ Children Act 2004, c. 31 (UK).

²⁷ *Nipun Saxena*, *supra* note 4.

The picture is further complicated by the lack of a ‘good faith’ immunity clause for reporters, of the kind found in US state statutes on mandatory reporting.²⁸ Section 19 imposes a duty to report, but there is no immunity for a person who reports in good faith only to find that the report was false, and no mechanism to differentiate between a false report and a mistaken but honest one. The legal and reputational consequences of an unsubstantiated report on an accused can be devastating, especially given the social stigma attached to child sexual abuse allegations, and can be irreparable even if the accused is later acquitted.

V. SPECIAL COURTS, TRIAL PROCEDURE, AND THE CHILD’S PARTICIPATION IN ADJUDICATION

The POCSO Act lays down a unique adjudicatory mechanism under Part III (Sections 28 to 38) to prevent the re-victimisation of child witnesses in the criminal justice system. Section 28 requires each district to have Special Courts presided over by a judge experienced in child-related issues. A child-sensitive examination process is provided for in Section 33; the child may give evidence through video-link under Section 37; the Special Court may appoint an interpreter or expert under Section 38; and the child is to be separated from the accused during examination under Section 36, which also mandates an in camera trial procedure intended to provide a setting where the child can testify without the apprehension that comes with being in public.

In *Alakh Alok Srivastava v. Union of India*,²⁹ the Supreme Court observed the alarming pendency of cases under the POCSO Act and directed all States and Union Territories to ensure that the trial of all POCSO cases be completed within one year from the date of cognizance by the Special Court, in accordance with Section 35. The Court reasoned that lengthy trials would not only delay justice for victims, but that repeated court attendance would itself constitute a re-abuse of the victim in an institutional setting. The Court’s concern was empirical: NCRB data shows that the conviction rate in POCSO cases ranges between 32 and 38 per cent and that the pendency rate is formidably high, indicating both systemic problems in establishing proof and structural issues in court management.

It is noteworthy that the ‘support person’ mechanism has been introduced under Section 39 and Rule 4 of the POCSO Rules, 2020.³⁰ The provision requires that a parent, guardian, or trusted adult be present with the child during examination before the court and questioning by the

²⁸ See, e.g., Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(B)(i) (requiring states to provide immunity for good-faith reporters as a condition of federal funding).

²⁹ *Alakh Alok Srivastava*, *supra* note 6.

³⁰ Protection of Children from Sexual Offences Rules, 2020, r. 4 (India).

police. In practice, however, the Rules do not stipulate who may be a ‘support person’, nor do they assure that person’s independence from police influence; support persons are therefore often police officers or court staff without any training in child psychology or trauma-informed practice, which undermines the protective intent of the provision.

The comparative dimension is again informative. Under the Youth Justice and Criminal Evidence Act 1999 (UK),³¹ a wide variety of ‘special measures’ are available for vulnerable and intimidated witnesses, such as screens, live television links, evidence-in-chief by pre-recorded video statement, and examination through an intermediary. Importantly, these measures are available not only to children but to all vulnerable witnesses, and their use is subject to a judicial gatekeeping role that considers the impact of each measure on the overall fairness of the proceedings. Although similar in its aims, the approach of the POCSO Act is less flexible and lacks the same robust judicial oversight structure, and is therefore more rigid and at times less effective.

The media reporting ban under Section 23 merits separate examination. The provision imposes a virtual ban on the publication of any information relating to a POCSO case, including the name of the accused. While the protection of the child victim’s identity is an unimpeachable objective, the prohibition on publishing the accused’s identity also engages the public interest in open justice and the right of the accused to defend his reputation, all of which are protected by Article 19(1)(a) of the Constitution. In the United States, courts have repeatedly held that the First Amendment presumes open court proceedings and that such restrictions must be strictly scrutinised. Although in a different form, India too has a constitutional structure that views freedom of the press as a constitutional value requiring balancing, rather than extinction, by regulation.

VI. AGE OF CONSENT, ADOLESCENT AUTONOMY, AND THE CHILLING EFFECT ON CONSENSUAL CONDUCT

The most controversial part of the POCSO Act concerns adolescent sexual activity. The Act includes all persons under eighteen within the definition of ‘child’ (Section 2(d)) and makes any sexual contact with a child, whether consensual or not, a crime, thereby effectively raising the age of consent to eighteen, one of the highest in the world and well above the global median of sixteen. The practical effect is that, for example, a seventeen-year-old having consensual sex with a nineteen-year-old commits ‘penetrative sexual assault’ for which, under Section 4, there

³¹ Youth Justice and Criminal Evidence Act 1999, c. 23, §§ 16–30 (UK).

is a mandatory minimum sentence of ten years' rigorous imprisonment, a disproportionate and excessively punitive consequence for consensual adolescent conduct.

The Supreme Court directly confronted this tension in *Independent Thought v. Union of India*,³² where it read down Exception 2 to Section 375 of the IPC, holding that sexual intercourse by a husband with his wife before she reaches the age of eighteen years is rape, and thus brought within the POCSO framework. The judgment was rightly praised for its child rights dimension, but it paradoxically emphasised the categorical nature of the Act: its focus on age as the sole factor disregarded the nuanced nature of adolescence.

Over the last few years, a number of High Courts have read a measure of judicial discretion into what the Act intends as an absolute framework. In *Vijayalakshmi v. State*,³³ the Madras High Court held that courts are not 'automatons or algorithms' and must consider the social context and relative culpability in adolescent relationships. The Delhi High Court has likewise urged Parliament to enact laws recognising the difference between child sexual abuse and consensual adolescent intimacy, especially in cases of elopement and marriage that invariably end up in POCSO courts as de facto prosecutions by aggrieved parents. The Law Commission of India, in its 283rd Report on the age of consent under the POCSO Act, recommended against reducing the existing age of consent of eighteen years, while proposing guided judicial discretion in sentencing for consensual relationships involving adolescents between sixteen and eighteen.³⁴

A comparative overview shows that the majority of jurisdictions have a 'close-in-age' or 'Romeo and Juliet' exception to their statutory rape laws. Under the Sexual Offences Act, 2003, in England and Wales the age of consent is sixteen years, but the guidance to prosecutors provided by the Crown Prosecution Service³⁵ is that they should consider the public interest in prosecuting consensual sexual activity between people of a similar age; in practice, prosecutorial discretion means that consensual sexual activity between a fifteen-year-old and a seventeen-year-old is unlikely to be prosecuted. This discretion has been written into the law in several US states by explicit close-in-age exceptions: in California, for instance, consensual sexual activity between persons within three years of each other in age is treated far more leniently than predatory conduct.³⁶ The Criminal Code of Canada contains a close-in-age

³² *Independent Thought*, *supra* note 5.

³³ *Vijayalakshmi*, *supra* note 10.

³⁴ LAW COMM'N OF INDIA, REPORT NO. 283: AGE OF CONSENT UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (2023).

³⁵ CROWN PROSECUTION SERVICE, *Rape and Sexual Offences: Legal Guidance* (UK).

³⁶ Cal. Penal Code § 261.5 (West).

exception for consensual activity under Section 150.1(2),³⁷ which permits a limited age difference. There is no such provision in the POCSO Act.

VII. COMPARATIVE LEGAL FRAMEWORK: INDIA, THE UNITED KINGDOM, AND THE UNITED STATES

A systematic comparison of the POCSO Act with the legislation of the United Kingdom and the United States brings to light both convergences and remarkable differences in approach, architecture, and procedural design. The following table provides a comparative overview, followed by an analytical commentary.

Table 1: *Comparative Analysis of Child Sexual Offence Legislative Frameworks*

Aspect	POCSO Act, 2012 (India)	Sexual Offences Act, 2003 (UK)	PROTECT Act, 2003 (USA)	CRC Framework (International)
Age of consent	Below 18 (strict)	Below 16 (contextual)	Below 18 (federal)	No fixed age; context-sensitive
Reverse burden of proof	Yes: Sections 29 and 30	No: standard burden	No: standard burden	Not applicable (soft law)
Mandatory reporting	Yes: Section 19	Partial (professionals)	Yes (child abuse)	Encouraged under Art. 19 CRC
Special courts	Yes: Section 28	Yes: Crown Courts	Yes: federal courts	Recommended under General Comment 13
In camera trials	Mandatory: Section 36	Discretionary	Discretionary	Encouraged under the UNCRC
Child testimony	Section 33: video / magistrate	Special measures (YJCE Act 1999)	Closed-circuit TV allowed	Best-interest principle applies
Trial time limit	One year: Section 35	No fixed limit	Speedy-trial principles	Recommended under the UNCRC
Media restrictions	Absolute: Section 23	Partial: reporting restrictions	Partial: case-by-case	Identity protection mandated

³⁷ Criminal Code, R.S.C. 1985, c. C-46, § 150.1(2) (Can.).

As Table 1 shows, the POCSO Act is distinctive in two respects: the reverse burden of proof under Sections 29 and 30, and the mandatory in camera trial requirement under Section 36. Both features illustrate the legislature's effort to weight the procedural balance heavily towards the child victim, which is normatively appropriate but, as the preceding sections have shown, carries clear risks of disproportionate application. The UK framework, based on the Sexual Offences Act, 2003 and the Youth Justice and Criminal Evidence Act, 1999, has similar protective aims but uses more nuanced tools: special measures for vulnerable witnesses, prosecutorial guidelines that take account of proportionality, and an intermediary system that allows for child evidence without the formality of Section 36.

The US scheme, predominantly federal and based on the PROTECT Act of 2003 alongside a patchwork of state laws, is most distinct from the POCSO Act on the question of the burden of proof. The Due Process Clause of the Fifth Amendment, as read in *In re Winship*,³⁸ requires the prosecution to prove each element of a criminal offence beyond reasonable doubt, a standard that statutory reverse burden clauses such as those in Sections 29 and 30 of the POCSO Act would struggle to satisfy under Fifth and Fourteenth Amendment scrutiny. The constitutional framework of India, which is similarly protective of due process under Article 21, has not yet definitively tested the POCSO provisions against this standard. General Comment No. 13 also warns that child protection systems should rest on a comprehensive rights-based perspective in which children are treated not as objects of protection but as subjects with rights.³⁹ That rights-based dimension is not fully internalised in the architecture of the POCSO Act, which, through its mandatory reporting and reverse burden provisions, largely treats the child as an object of protection.

VIII. JUDICIAL TRENDS, IMPLEMENTATION REALITIES, AND THE PROBLEM OF FALSE PROSECUTION

The judicial interpretation of the POCSO Act has produced a body of jurisprudence that is both progressive in its protectionist approach and uneasy in its encounters with false prosecution and wrongful conviction. The Supreme Court's decision in *Aparna Bhat v. State of Madhya Pradesh*,⁴⁰ though concerned with the bail conditions imposed on persons accused of sexual offences, made important observations on the dignity of the accused and the impropriety of using criminal proceedings as a platform to condemn those accused. The Court's direction that bail conditions should not be framed on the assumption that the accused is guilty is particularly

³⁸ *In re Winship*, 397 U.S. 358, 364 (1970).

³⁹ General Comment No. 13, *supra* note 12.

⁴⁰ *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230.

relevant in the POCSO context, where bail is rarely granted and pre-trial detention is common given the seriousness of the offences.

False prosecution under the POCSO Act has increasingly come under judicial scrutiny. In several High Courts, accused persons have been acquitted where complaints were found to be motivated by personal animosity, disputes over land or property, or parental objection to consensual adolescent relationships. The Madras High Court, in *Ganesan v. State* (2020),⁴¹ acquitted the accused but expressed clear concern that the POCSO Act was being used as a tool for harassment in rural Tamil Nadu, with inadequate safeguards against vexatious reporting. NCRB data showing that a significant proportion of POCSO cases end in acquittal or discharge is empirical evidence supporting these judicial concerns.

The constitutional guarantee of a fair trial, the right against self-incrimination under Article 20(3), and the right to life and personal liberty under Article 21 collectively impose on the POCSO regime an obligation of procedural fairness that cannot be wholly surrendered on the altar of child protection. As the Supreme Court has repeatedly held, most recently in the context of criminal procedure generally in *Arnab Manoranjan Goswami v. State of Maharashtra* (2021),⁴² liberty is not an abstract value but a living constitutional right. This constitutional tension is compounded by the mandatory minimum sentencing regime of the POCSO Act, which affords the judge no discretion to impose a sentence lower than the mandatory minimum even where the mitigation is strong.

A parallel body of litigation has arisen on the issue of statutory age determination. Where the age of the complainant is disputed, the directions of the Supreme Court in *Arnit Das v. State of Bihar* (2000)⁴³ and Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015⁴⁴ provide that age should be determined on the basis of documentary evidence; in the absence of documentary evidence, through radiological testing; and, in case of doubt, by giving the accused the benefit of the doubt. The POCSO Act itself contains no provision on the methodology of age determination, an important gap, and the matter has been left to the courts, producing a patchwork of precedents with an unacceptable level of inconsistency.

IX. FINDINGS AND SUGGESTIONS

This paper reaches four principal findings. First, the POCSO Act is a constitutionally sound and internationally compliant child protection legislation, but it contains certain procedural features

⁴¹ *Ganesan v. State*, CrI. A. No. 355 of 2020 (Madras H.C. 2020).

⁴² *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 S.C.C. 427.

⁴³ *Arnit Das v. State of Bihar*, (2000) 5 S.C.C. 488.

⁴⁴ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 94 (India).

conducive to miscarriage of justice and abuse of process that require legislative attention. Second, Sections 29 and 30, as written, impose a reverse burden of proof that is far more onerous than analogous provisions in UK and US law, and that burden has not yet been definitively tested against the constitutional proportionality standard of Article 21. Third, without a professional discretion clause, a good-faith immunity provision, and sufficient investigative infrastructure, the mandatory reporting requirement under Section 19 carries significant potential for unsubstantiated allegations to harm accused individuals and to overburden an already strained criminal justice system. Fourth, the absence of a close-in-age exception to the statutory rape provisions leads to the criminalisation of consensual adolescent relationships, a result that is disproportionate, inconsistent with international comparative standards, and poorly served by the use of mandatory minimums.

On the basis of these findings, this paper proposes the following recommendations.

(a) Reform of the evidentiary presumptions. Parliament should modify Sections 29 and 30 so that the burden of proof is not reversed outright, but instead follows the model of Section 75 of the Sexual Offences Act, 2003 (UK), under which a burden is placed on the accused only when certain circumstances are established by the prosecution, and not upon the mere proof of threshold facts.

(b) Calibration of mandatory reporting. Section 19 should be amended to include a professional discretion clause enabling medical, psychological, and educational professionals to exercise informed judgment as to when the reporting requirement is triggered; a good-faith immunity provision protecting a reporter who reports in good faith; and a mechanism for the administrative screening of reports before criminal registration, comparable to the duty to investigate under the Children Act, 1989 (UK).

(c) A close-in-age exception. A ‘close-in-age’ or ‘peer’ exception should be introduced so that consensual sexual activity between two persons both aged between sixteen and eighteen is not treated as an offence under the Act, thereby aligning India with accepted comparative practice while maintaining the protective core of the Act.

(d) Strengthening the support person mechanism. The support person mechanism under Section 39 should be made more robust by requiring support persons to be qualified child psychologists or social workers, independent of the police, and trained in trauma-informed practice; this can be achieved by amending the POCSO Rules, 2020 without the need for a parliamentary amendment to the Act.

X. BIBLIOGRAPHY

Primary Sources

- Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012), as amended by the Protection of Children from Sexual Offences (Amendment) Act, 2019.
- The Indian Penal Code, 1860 (Act No. 45 of 1860).
- The Code of Criminal Procedure, 1973 (Act No. 2 of 1974).
- The Constitution of India, 1950.
- The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).
- The Protection of Children from Sexual Offences Rules, 2020.
- Sexual Offences Act 2003 (UK), c. 42.
- Youth Justice and Criminal Evidence Act 1999 (UK), c. 23.
- Children Act 1989 (UK), c. 41.
- Children Act 2004 (UK), c. 31.
- PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (US).
- UN Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).
- UN Committee on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child to Be Heard, U.N. Doc. CRC/C/GC/12 (2009).
- UN Committee on the Rights of the Child, General Comment No. 13 (2011): The Right of the Child to Freedom from All Forms of Violence, U.N. Doc. CRC/C/GC/13 (2011).

Cases

- *Alakh Alok Srivastava v. Union of India*, (2018) 17 S.C.C. 291.
- *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230.
- *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 S.C.C. 427.
- *Arnit Das v. State of Bihar*, (2000) 5 S.C.C. 488.
- *Ganesan v. State*, CrI. A. No. 355 of 2020 (Madras H.C. 2020).
- *In re Winship*, 397 U.S. 358 (1970).
- *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800.

- *Libnus v. State of Maharashtra*, 2021 SCC OnLine Bom 66.
- *Nipun Saxena v. Union of India*, (2019) 2 S.C.C. 703.
- *Noor Aga v. State of Punjab*, (2008) 16 S.C.C. 417.
- *State of Karnataka v. Shivanna*, (2014) 8 S.C.C. 913.
- *Vijayalakshmi v. State*, CrI. A. No. 587 of 2021 (Madras H.C. 2021).
- *Woolmington v. Director of Public Prosecutions*, [1935] A.C. 462 (H.L.).

Secondary Sources

- Andrew Ashworth & Meredith Blake, *The Presumption of Innocence in English Criminal Law*, 1996 CRIM. L. REV. 306.
- SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1999).
- VRINDA GROVER, PRIYA PILLAI & MANJIMA MAJUMDAR, POCSO ACT: A REPORT ON THE STATUS OF IMPLEMENTATION (HAQ: Centre for Child Rights 2017).
- LAW COMM’N OF INDIA, REPORT NO. 207: PROPOSAL FOR LEGISLATION ON CRIMES AGAINST CHILDREN (2008).
- LAW COMM’N OF INDIA, REPORT NO. 283: AGE OF CONSENT UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (2023).
- Ben Mathews & Donald C. Bross, *Mandated Reporting Is Still a Policy With Reason: Empirical Evidence and Philosophical Grounds*, 32 CHILD ABUSE & NEGLECT 511 (2008).
- NAT’L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV’T OF INDIA, CRIME IN INDIA 2021 (2022).
- MRINAL SATISH, DISCRETION, DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA (2017).
- KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW (3d ed. 1998).
- MINISTRY OF WOMEN & CHILD DEV., GOV’T OF INDIA, ANNUAL REPORT 2022-23 (2023).
