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Between Shield and Silence - Balancing Dignity and Justice

Srishti S Kumar^a

^aIndian Institute of Management, Rohtak, India

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This article critically examines the balance between fairness, privacy, protection, and dignity within child rights legislation, with particular emphasis on the Protection of Children from Sexual Offences Act, 2012 (POCSO). It analyses the legal safeguards designed to protect child victims from secondary victimisation and psychological trauma throughout the criminal justice process. The article discusses privacy-oriented measures such as victim anonymity, in-camera proceedings, confidentiality of records, and child-friendly investigation and trial procedures that aim to preserve the dignity and mental well-being of children. It further highlights the importance of prompt investigation, prosecution, and adjudication in ensuring effective protection and access to justice. At the same time, the study identifies practical challenges that often weaken these safeguards, including judicial delays, media sensationalism, inadequate police training, procedural lapses, and the increasing risk of online disclosure of sensitive information. Through an analysis of significant judicial developments in India, alongside comparative perspectives from the United Kingdom and the UN Convention on the Rights of the Child, the article evaluates the effectiveness of existing protections and suggests the need for stronger implementation mechanisms.

Keywords: *child rights, pocso, privacy, protection, dignity.*

INTRODUCTION

UN Convention on the Rights of the Child (UNCRC), 1989 mentions in Article 1 the definition of a child as every person who is under the age of 18.¹ From ancient times, children were merely considered as property of their guardian, and the responsibility of their guardian to decide about their future.² Children used to be considered as 'small adults' and were forced to work for their family, but after World War I, children were given the status of 'civilians'; that is, they were to be considered as 'small adults but with rights'. The official recognition of this term was given by philosophers like John Locke and Jean-Jacques Rousseau long before.³

PRIVACY VS PROTECTION

POCSO, apart from enumerating the rights that children bear, takes into consideration the elements of protection and privacy as the core factor on which the whole act is effectively able to be implemented. In the case of *Puttaswamy*, the Supreme Court held that Privacy with respect to POCSO is the act of keeping a piece of information private relating to the child or the child's guardian, which, if disclosed, can adversely affect their survival. Article 21 includes the aspect of privacy and introduce privacy is one of the fundamental rights that is to be provided to people. The law has specifically provided that there are certain specific types of privacy, of which special, decisional and informational are among them.⁴ Protection in respect to the domain of POCSO enumerate about act of taking actions such as investigation, adjudication and prosecution, which form the basis of the criminal law. The main purpose of protection that POCSO try to reach is providing physical safety and ensuring that justice is served. The main liability for the protection of people falls as an obligation of the state.⁵ Now taking into consideration the fact that the adults also need protection from the state to get the basic rights like dignity and respect, being essentials of humanity. The core problem in the whole situation is keeping the proportionality factor

¹ United Nations Convention on the Rights of the Child 1989, art 1

² 'patria potestas' (*Encyclopedia Britannica*) <<https://www.britannica.com/topic/patria-potestas>> accessed 10 April 2026

³ Zeljka Mazinjanin, 'Children's Rights History' (*Humanium*, 11 September 2024) <<https://www.humanium.org/en/childrens-rights-history/>> accessed 10 April 2026

⁴ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

⁵ 'parens patriae' (*Legal Information Institute*) <https://www.law.cornell.edu/wex/parens_patriae> accessed 10 April 2026

between privacy and protection. In case of excessive protection, there is a risk of the leak of data, and excessive privacy can lead to under-reporting or non-intervention.

LEGAL ARCHITECTURE OF PRIVACY IN POCSO

There was no factor of privacy that was explicitly codified or present earlier. Privacy was everywhere earlier with respect to the geographical limitation, but now it has extended from countries geography to the geographical limitation to bodily autonomy. With the growth of modern means through which society develops and interacts with others, incidents of privacy breaches have increased at a comparable pace. Laws are adequately formulated by the authorities with respect to such incidents, such as the Protection of Children from Sexual Offences Act, 2012, which is particularly applicable in India with relation to child-related crime incidents.

Section 15:⁶ In the literal sense, this section talks about the inchoate crimes that are the act which are considered equivalent to crimes even if no outcome occurs.

Section 23:⁷ The respective section talks about the protection of the privacy of a child's reputation and dignity. No media is allowed to publish any kind of information in relation to a child until and unless the credibility of the same is checked. This section is important cause of its act of safeguarding children's human essentials.

Section 24:⁸ This section in itself holds a very important aspect related to procedural safety and dignity.

Section 33:⁹ It talks about the protection that a child deserves, the same as that of other people.

The section, as mentioned, holds some of the most important elements with respect to safeguarding the child's dignity and respect. If we take into consideration international laws that are important with respect to this is UN Convention on the Rights of the Child (CRC),

⁶ Protection of Children from Sexual Offences Act 2012, s 15

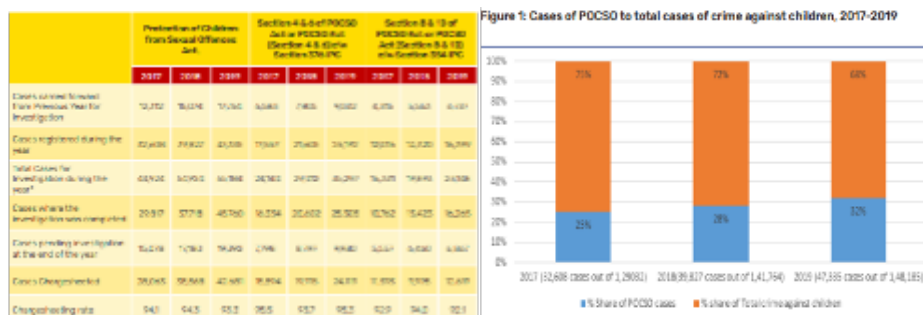
⁷ Protection of Children from Sexual Offences Act 2012, s 23

⁸ Protection of Children from Sexual Offences Act 2012, s 24

⁹ Protection of Children from Sexual Offences Act, 2012, s 33

1989, is considered to be the basis of children’s rights. It gives rights to children regarding their participatory, protective, and provisional rights.

IMPLEMENTATION GAPS AND GROUND-LEVEL REALITIES



Laws that are very well established are considered to be of much weightage, as we can infer from the punishments that are imposed upon them.¹⁰ crimes committed, but if we look at the statistical data, we can see that around 2/3rd of the crimes against children fall within the ambit of POCSO. In the latter (Fig. 2), we see that there is an increase in the number of cases against children, which is due to an amendment made in the act in 2019, which expanded the offence and also increased the punishment. This amendment is also one of the reasons for a huge number of forward cases (in Fig. 2), as the legislature does a thorough investigation before adjudication. In 2024, the number of judges was also increased from 30 to 33 in 2019¹¹ but around 27,604 of 82,831 cases are less than a year old.¹² These backlogs are not only affecting the establishment of an effective judiciary, but it is also hindering the status of a dignified life of the child victims in this.

MEDIA SENSATIONALISM & POLICE AND INVESTIGATION PRACTICES

Digital platforms are looking for the content they can effectively use to increase their TRP. Such a spike is mostly possible to happen when they are able to get intrinsic information regarding the hot topic at that time. In the Badlapur assault case¹³ talks about the sexual assault of two four-year-old girls by a sweeper, influencer, through media spread false information regarding the death of one of the victims and also regarding her mother, which

¹⁰ STATUS of POCSO CASES IN INDIA (Satyarthi, 2021)

¹¹ Supreme Court (Number of Judges) Amendment Act 2019, s 2

¹² Dhananjay Mahapatra, 'Pending cases in SC close to 83,000 now, the highest ever' *The Times of India* (30 August 2024) <<https://timesofindia.indiatimes.com/india/pending-cases-in-sc-close-to-83000-now-the-highest-ever/articleshow/112908859.cms>> accessed 27 March 2026

¹³ *High Court On Its Own Motion v State of Maharashtra* (2024) SCC OnLine Bom 2744

created problems in front of the police station and made it hard to properly adjudicate the case appropriately.¹⁴ The issue here is the feature of digital permanence of information online. ‘Right to be forgotten’ from GDPR article 17 ‘Right to erasure’¹⁵ is a fundamental right of the citizens, but it mostly lacks in its proper application.

The process of investigation, as mentioned in the POCSO, is articulated in such a manner to provide a child-centric philosophical approach. This approach is inclined towards minimising the psychological trauma of the child victims. In section 24, the process of taking a statement is done at the child’s residence or any place they feel safe. To restrain authorities from repeatedly questioning the child victim and making them go through their trauma again, it was established that the child victim's statement alone is enough to prove a sexual offence, and there’s no need for extra proof.¹⁶

JUDICIAL RESPONSES AND EVOLVING INTERPRETATION

The scope of section 228(A) IPC was widened, and was in respect to that, not only the media but also judges were restricted from mentioning anything about the victim’s personal information.¹⁷ Bhupinder Sharma is considered the first case in reference to section 228(A) IPC, and it gave an important principle, which was also laid down later in POCSO under section 24(5). We see that a doctrinal approach was heavily emphasised by the Indian courts in cases like *State of Punjab v Gurmit Singh*¹⁸, as courts specifically complied with section 24(5) of POCSO to refrain from adversely affecting both self-respect and dignity that the prosecutrix holds in society. A similar approach was forwarded to the cases of *Nipun Saxena v UOI*,¹⁹ *Kamal v State*,²⁰ and *Sakshi v UOI*²¹ Justice Anup Jairam Bhambhani himself made the observations in the judgment²² in the case of involvement of a minor, anonymised tags

¹⁴ Pradeep Gupta, ‘Case against influencer for spreading rumours about victim in Badlapur sexual assault case’ *The Times of India* (22 August 2024) <<https://timesofindia.indiatimes.com/city/mumbai/case-against-influencer-for-spreading-rumours-about-victim-in-badlapur-sexual-assault-case/articleshow/112719119.cms>> accessed 01 March 2026

¹⁵ General Data Protection Regulation 2016, art 17

¹⁶ *Bhanei Prasad alias Raju v State of Himachal Pradesh* 2025 INSC 934

¹⁷ *Bhupinder Sharma v State of Himachal Pradesh* (2003) 8 SCC 551

¹⁸ *State of Punjab v Gurmit Singh & Ors* (1996) 2 SCC 384

¹⁹ *Nipun Saxena v Union of India & Ors* (2019) 2 SCC 703

²⁰ *Kamal v State* 2023 INSC 678

²¹ *Sakshi v Union of India* WP (Crl) 33/1997

²² *Kamal v State* 2023 INSC 678

to be provided to the prosecutrix, convicts and key witnesses in order not to ruin the social standing in the society.

COMPARATIVE OR POLICY PERSPECTIVE

Child protection laws like the Children and Young Persons Act 1933, enacted in the UK, divide children into two categories based on their age, namely 'child' (below the age of 14 years) & 'young person' (above 14 but below 18). If we see it from the contemporary perspective, with advancement in technology and the accessibility children have in today's time to that technology, it has become essential for the law to develop in the same manner.²³ This act is one example of it, as this law presumes that a 16-year-old holds enough maturity to care for a younger child, understand harm or be held criminally accountable for their actions. In the Indian legal perspective, the maturity of a child is based upon the age of that person and not based upon the exposure they have to society. There is a need for a balanced approach to this problem because when children are considered for voting, they are considered immature, but when the same child is tried for criminal liability, he is considered to be a young adult, young enough for certain acts.²⁴ Hence, it is important to give a cohesive approach and emphasis on the culture and social practices to make more informed decisions. A classic example is the Nirbhaya case, where one of the most aggressive rapists was a minor. There was a recent case of 3 minors doing rape of a 6-year-old girl. Taking into consideration the U.S. Supreme Court, we encounter that an established principle was established for children who were engaged in criminal cases. The U.S. Supreme Court took a lenient approach towards children accused of criminal liability by abolishing the juvenile death penalty,²⁵ and this was further upheld in the case, but limiting the extent of its application to the children involved with murder charges²⁶. It was found that there is relatively less connection between brain systems that regulate rational decision-making and those that regulate emotional arousal.²⁷

²³ Fiona Dyer et al., 'The three pillars of child-centred justice' (*The Law Society Gazette*, 26 September 2025) <<https://www.lawgazette.co.uk/practice-points/the-three-pillars-of-child-centred-justice/5124589.article>> accessed 07 April 2026

²⁴ Jonathan Todres, 'Maturity' (2012) 48(5) *Houston Law Review* <<https://www.academia.edu/17742817/Maturity>> accessed 07 April 2026

²⁵ *Roper v Simmons* [2005] 543 US 551 (2005)

²⁶ *Graham v Florida* [2010] 560 US 48 (2010)

²⁷ Carmen Morawetz et al., 'Effective amygdala–prefrontal connectivity predicts individual differences in successful emotion regulation' (2017) 12(4) *Social Cognitive and Affective Neuroscience* <<https://pubmed.ncbi.nlm.nih.gov/27998996/>> accessed 07 April 2026

UK AND UN CHILD RIGHTS CONVENTION

Sentenced only - length of stay by age	<1 mth	1-3 mths	3-6 n 6-12 mths	1-2 yrs	2 yrs+	Total
15 years	1	2	0	0	0	0 2.7%
16 years	2	5	4	4	1	0 ####
17 years	7	19	8	10	14	2 ####
18 years	0	1	5	15	12	4 ####
Other	0	0	0	0	0	0 0.0%
Total	10	24	17	29	27	6 ####

Insentenced only - length of stay by age	<1 mth	1-3 mths	3-6 n 6-12 mths	1-2 yrs	2 yrs+	Total
15 years	2	0	1	0	0	0 5.9%
16 years	3	2	0	1	0	0 ####
17 years	5	8	5	3	0	0 ####
18 years	0	3	8	9	1	0 ####
Other	0	0	0	0	0	0 0.0%
Total	10	13	14	13	1	0 ####

With an in-depth understanding of UNCRC, it can be easily inferred that the laws that are made with respect to children accused of crime or victims of such crimes, the former are provided with adequate privacy and the latter are provided with protection. Article 3²⁸ of the convention itself establishes an obligation upon the administrative system to take the requisite decision, which will eventually protect the interests of the children who conflict with the law or victims of such crimes. The UK has an organised youth justice system under which children are considered to be under the age of 14 and will be considered as young people from 14 to 18.²⁹ The establishment of the child-centric justice model was established because the children were prone to being exploited both through direct violence and structural violence. We see it in those cases where not only the minority factor that is present, but also past discrimination factors play an equivalent role. Such factors of discrimination we can acknowledge in the case of Child-Q, where a black girl was strip-searched with no presence of an adult.³⁰ We can see the violation of both privacy and protection that a child deserved to get in law was refrained from. Child-centred justice is grounded in the principles of commencing with the best interest of the child, which is possible only if the children are treated with dignity and allowed an adequate amount of involvement. In Wetherby prison in Yorkshire, it was found³¹ that the children who were taken into custody were more prone to self-harm and psychological distress because there were no stipulated safeguards. The restraints that were put on them were grossly inhumane. In the His Majesty's Prison and

²⁸ United Nations Convention on the Rights of the Child 1989, art 3

²⁹ Ian Blakeman, 'THE YOUTH JUSTICE SYSTEM OF ENGLAND AND WALES' (*United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders*) <https://www.unafei.or.jp/publications/pdf/RS_No78/No78_13VE_Blakeman.pdf> accessed 07 April 2026

³⁰ Simon Flacks, 'CHILD Q, SCHOOL SEARCHES AND CHILDREN'S RIGHTS' (2024) 5(2) *Amicus Curiae* <<https://journals.sas.ac.uk/amicus/article/view/5686/5342>> accessed 07 April 2026

³¹ *Prison and YOI inspections* (HM Inspectorate of Prisons, 2023)

Young Offender Institution, the survey analysis was done for the young offenders and it was found that there was significantly less amount of child-in-custody, which shows that the justice system is strictly following law recognised by article 37³² which states that, 'a child should not be detained with no scope of release or he should only be detained if that is the last option that could be exercised'. Hence, the law gives the power to the authorities to make decisions that are in the best interest of the child, but it is found that people in power are not considering the welfare of the child but are rather looking forward towards completing their liability of taking them into custody when they commit any crime and such custody is done unlawfully. Taking into consideration the trauma-informed adjudication, where the children are taken into consideration, if there is some trauma they are dealing with, then it is argued in court that their conduct should be given emphasis, not conclusion, while the punishment is being decided. Hence, UNCRC showcases behaviour that is more concerned about the protection of children who are both in conflict with the law or victims of such crimes, but UK standards give more emphasis towards the children who are targeted by the law as accused.

³² United Nations Convention on the Rights of the Child 1989, art 37