

# PROSECUTING CHILD SEXUAL ABUSE: BALANCING THE RIGHTS OF THE ACCUSED WITH THE PROTECTION AND PRIVACY OF CHILD VICTIMS IN CRIMINAL TRIALS

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## **Abstract:**

This research explores the complex legal and ethical landscape of prosecuting child sexual abuse (CSA) in India, emphasizing the dual imperative to uphold the fair trial rights of the accused and to safeguard the protection, privacy, and dignity of child victims. Anchored in the Protection of Children from Sexual Offences (POCSO) Act, 2012, and supported by Indian constitutional law, criminal procedure, and judicial interpretations, the study evaluates the effectiveness of existing legal safeguards and courtroom practices. It integrates doctrinal, comparative, and empirical approaches, reviewing challenges such as courtroom trauma, media violations, over criminalization of adolescent behavior, and infrastructural limitations in POCSO courts. Drawing on national and international jurisprudence, it recommends a rights-sensitive yet child-centric model that reconciles justice with trauma-informed protection for victims.

**Keywords:** *Child Sexual Abuse, POCSO Act, Fair Trial, Victim Protection, Child Witness, Indian Criminal Law, Privacy, Judicial Safeguards.*

## **Introduction:**

Prosecuting child sexual abuse (CSA) presents a dual challenge for the Indian criminal justice system: it must protect the dignity and welfare of the child victim while safeguarding the accused's right to a fair trial. This dilemma is particularly sensitive in cases involving family members, where the risks of trauma, witness intimidation, and systemic failure are heightened. India's introduction of the Protection of Children from Sexual Offences Act, 2012 (POCSO), signaled a paradigm shift. However, the criminal process often remains adversarial and intimidating for children, despite these legal reforms (Belur & Singh, 2015).

Child sexual abuse (CSA) represents one of the most serious and emotionally charged crimes in contemporary society. The prosecution of such offenses is complex, requiring a careful balance between safeguarding the rights of the accused and ensuring the protection and privacy of child victims. On one side stands the accused, who is constitutionally entitled to a fair trial, including the right to confront accusers and examine evidence. On the other side is the child victim, often traumatized and vulnerable, whose involvement in the criminal justice process can be re-traumatizing. This research explores how legal systems can balance these competing interests and argues that a trauma-informed, child-sensitive approach can be reconciled with the principles of due process and a fair trial.

### **Legal and Institutional Framework:**

#### POCSO Act, 2012

The POCSO Act provides gender-neutral protections and introduces child-friendly procedures. Special courts are mandated under Section 28, and time-bound completion of trials is required by Section 35. Section 33 lays down child-sensitive trial procedures, including the presence of a support person, avoidance of repeated testimony, and protection from aggressive cross-examination (POCSO Act, 2012).

#### Indian Evidence Act, 1872 & CrPC

Section 118 of the Indian Evidence Act provides that any person, including a child, is competent to testify if they can understand and respond to questions rationally (Indian Evidence Act, 1872). CrPC Section 273 was amended following *Sakshi v. Union of India* (2004), allowing alternative methods of testimony like video recordings or screen shields to minimize confrontation between child victims and accused (Law Commission of India, 2000).

#### Juvenile Justice Act, 2015

While primarily aimed at children in conflict with law, the Juvenile Justice (Care and Protection of Children) Act emphasizes a child-sensitive justice system. Provisions like child welfare committees (CWCs) support rehabilitation and psychosocial needs (JJ Act, 2015).

## Best Practices for Ensuring Child Victim Privacy:

Domain	Recommended Practice
Courtroom	In-camera trials, child-friendly rooms, no public entry
Police	Anonymous FIRs, coded registration, protected interviews
Media	Blur faces, change names, avoid community/parental details
Medical Examination	Private setting, female staff (when appropriate), consent awareness
Legal Aid	Provide child advocates trained in privacy law

## Three Stages of Child Development in Indian Legal Standards:

### 1. Early Childhood (0–6 years)

- **Legal Context:**
- The law implicitly recognizes this stage as one of extreme vulnerability. The Protection of Children from Sexual Offences (POCSO) Act, 2012, applies to all children below 18 years, but younger children (0–6) are considered especially incapable of giving reliable testimony due to limited cognitive and communicative skills.
- **Procedural Safeguards:**
- Special Courts under POCSO are required to provide child-friendly infrastructure (Section 28), and medical examination or statements are often corroborated by expert psychologists or social workers to interpret children's narratives (POCSO Rules 2019).
- **Evidence Standards:**
- Section 118 of the Indian Evidence Act allows the court to assess the competence of child witnesses based on their ability to understand questions and give rational answers, which is often a challenge for very young children.

## 2. Middle Childhood (7–11 years)

- **Legal Context:**
- Children in this age group are increasingly capable of giving reliable evidence. Indian courts, citing precedents like *State of M.P. v. Balveer Singh* (2025), evaluate the child's age, intelligence, and understanding to determine credibility.
- **Testimonial Provisions:**
- POCSO mandates that children's testimony be recorded in a child-sensitive manner—through video recordings or via intermediaries—minimizing trauma (Sections 28–33). The court can allow testimony through screens or CCTV (as per *Sakshi v. Union of India*, 2004) to protect the child from direct confrontation with the accused.
- **Cross-Examination:**
- Courts may exercise discretion in moderating cross-examination to avoid re-traumatization, guided by Section 146(2) of the Juvenile Justice Act, 2015, which advocates for special procedures for minors.

## 3. Adolescence (12–18 years)

- **Legal Context:**
- Adolescents are legally recognized as more autonomous but still require protection under POCSO and the Juvenile Justice Act. However, this group presents complexities, particularly regarding consensual sexual activity, which the law criminalizes if below 18 years (POCSO, 2019 amendment).
- **Legal Challenges:**
- Courts often grapple with balancing child protection and autonomy. The law is criticized for conflating consensual adolescent relationships with abuse, leading to calls for differentiated legal standards for adolescents (Sharma & Sahoo, 2022).
- **Trial Procedure:**
- Adolescents can testify with greater competency but need trauma-sensitive handling. The use of intermediaries, counseling, and witness support persons is encouraged to ensure informed participation without coercion.
- **Privacy:**
- Media restrictions under POCSO and Section 228A IPC protect the privacy and identity of child victims, including adolescents, during and after trials.

## Supporting Legal Provisions & Cases

Stage	Relevant Laws & Sections	Notable Cases
Early Childhood	POCSO Act Sections 28-33; Evidence Act	<i>State of M.P. v. Balveer Singh</i> (2025)
Middle Childhood	POCSO Act Sections 28-33; CrPC <i>Sakshi v. Union of India</i>	<i>Mangoo v. State of M.P.</i> (1995)
Adolescence	POCSO Act (2019 Amendment); Juvenile Justice Act (2015)	<i>C.A. Rajasekar v. Union of India</i> (2023)

### Doctrinal and Judicial Innovations:

Indian courts have accepted that child witnesses can be reliable if their testimony is credible and untainted by coaching or manipulation.

- In *State of M.P. v. Balveer Singh* (2025), the Supreme Court upheld conviction based on the uncorroborated testimony of a 7-year-old, ruling that age alone does not discredit testimony if the child demonstrates understanding and consistency.
- *Mangoo v. State of M.P.* (1995) emphasized that a child's testimony should not be summarily dismissed on suspicion of tutoring but assessed alongside medical and circumstantial evidence.
- *Sakshi v. Union of India* (2004) recommended closed-court proceedings, video testimony, and avoidance of repeated appearances for children, influencing subsequent POCSO implementation.

### National Judicial Academy Guidelines and Other Protocols:

- The National Commission for Protection of Child Rights (NCPCR) has issued protocols for interviewing child victims.
- Training modules for judges and police now include trauma-informed approaches and mandatory sensitivity training under POCSO's implementation framework.

### Child Witness Testimony: Competence and Credibility:

#### *Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341*

The Supreme Court held that the testimony of a child witness, if found credible and consistent, does not require corroboration. The key is the competence of the child, not age.

**State of M.P. v. Balveer Singh, (2025) SCC OnLine SC 234**

The Court upheld the conviction based solely on the uncorroborated evidence of a 7-year-old girl, ruling that the child's understanding of truth and ability to narrate events clearly satisfied the test under Section 118 of the Indian Evidence Act.

**Consensual Adolescent Relationships and Misuse of POCSO:****C.A. Rajasekar v. State, 2023 SCC OnLine Mad 2266**

The Madras High Court recognized the problematic criminalization of consensual relationships among adolescents under POCSO. The court recommended that lawmakers revisit the age of consent debate, especially where no coercion or exploitation is involved.

**X v. State of Maharashtra, 2022 SCC OnLine Bom 4113**

The Bombay High Court granted bail to a 19-year-old accused in a consensual relationship with a 17-year-old girl, calling the case a "misuse of protective legislation."

**Summary of Judicial Trends:**

<b>Judicial Concern</b>	<b>Judicial Response</b>
Protection of child victim identity	Strict enforcement of anonymity under POCSO & IPC
<b>Competency of child witnesses</b>	Reliance on age-appropriate understanding, not just age
<b>Hostile witnesses</b>	Recognition of trauma and need for support persons
<b>Consensual adolescent cases</b>	Increasing recognition of misuse and call for legal reform
<b>Procedural sensitivity in trials</b>	In-camera proceedings, video testimony, limited confrontation

## Empirical Evidence and Trial Realities:

Dube and Shaw (2023) conducted a field study in West Bengal's POCSO courts, finding that while judges attempted to adapt procedures to children's needs, lack of infrastructure and poor training undermined these goals. Many courts lacked basic facilities like CCTV setups or child waiting rooms.

Bhawnania (2021) observed that trial courts often scrutinize the victim's mother's credibility and lifestyle, reflecting patriarchal biases. Defense cross-examinations sometimes border on character assassination, undermining protective provisions in law.

## Comparative and International Perspectives

The United Kingdom's Youth Justice and Criminal Evidence Act, 1999, and Australia's use of pre-recorded interviews and intermediaries provide useful models for Indian reforms (Plotnikoff & Woolfson, 2009). In *Maryland v. Craig* (1990), the U.S. Supreme Court upheld video testimony for child victims, balancing confrontation rights with emotional protection—a principle Indian courts have gradually incorporated.

## Constitutional Protections:

- **Article 21:** The right to life includes the right to dignity, bodily integrity, and privacy. Courts have affirmed this in *Justice K.S. Puttaswamy v. Union of India* (2017) and linked it to the rights of child victims.
- **Article 39(e) & (f)** (Directive Principles of State Policy): Mandate the state to ensure children are not abused and are given facilities to develop in a healthy manner.

## Guidelines from the Supreme Court:

In *Sakshi v. Union of India* (2004), the Court emphasized that traditional cross-examination techniques must evolve to prevent further trauma to victims. The Court allowed:

- Use of screen partitions
- Video recording of evidence
- No repeated summoning of child witnesses

These suggestions have been institutionalized under POCSO and further elaborated in the **POCSO Rules, 2020**.

## Challenges and Critique:

Mandatory reporting under Section 19 of the POCSO Act conflicts with the evolving capacities and consent of adolescents (Seth, 2020). Criminalizing consensual adolescent sexual activity under POCSO has led to misuse and moral policing, a concern highlighted by Sharma and Sahoo (2022).

While POCSO mandates child-friendly procedures, inconsistent application, judicial insensitivity, and overburdened courts continue to traumatize victims and compromise justice.

## Recommendations:

### 1. Child-Centric Court Infrastructure

All POCSO courts should be equipped with CCTV testimony rooms, waiting areas, and support personnel.

### 2. Capacity Building

Judges, lawyers, and police must receive trauma-informed training, particularly on child psychology and handling disclosure.

### 3. Review of Mandatory Reporting

Legal reforms should consider exceptions for consensual acts among peers aged 16–18, balancing protection with autonomy.

### 4. Stronger Victim Privacy Safeguards

Anonymity and media regulation should be enforced strictly to protect identities.

### 5. Monitoring and Evaluation

Institutional mechanisms must regularly audit how POCSO courts function and assess compliance with protective norms.

## Conclusion:

India has made substantial progress in legislating protections for child victims of sexual abuse. However, these advancements must be accompanied by structural, procedural, and cultural reforms. The tension between the rights of the accused and the welfare of the victim can be resolved through fair, sensitive, and child-informed jurisprudence. Future legal reforms must be rooted in empathy, empirical realities, and constitutional commitments to dignity and justice.

Indian courts have played an increasingly progressive role in interpreting laws to protect child victims, while guarding against procedural unfairness for the accused. However, inconsistencies persist at the trial court level, where lack of infrastructure, training, and awareness often undermines these judicial mandates. The next chapter will explore these practical challenges and recommend reforms based on field studies and expert analyses.

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