

Role of the Judiciary in the Protection of Children from Sexual Abuse in India

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Abstract

Child sexual abuse is among the gravest violations of bodily integrity, dignity, and childhood. In India, the judiciary has played a transformative role in moving the legal system from a narrow, adult-centric understanding of sexual violence toward a child-sensitive framework grounded in dignity, access to justice, procedural fairness, and rehabilitation.[cite:1][cite:5] The enactment of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) institutionalised this shift by creating specific offences, special courts, mandatory reporting obligations, and child-friendly trial procedures. Yet the practical force of these statutory guarantees has depended significantly on judicial interpretation, constitutional supervision, and case-by-case innovation by the Supreme Court and High Courts. This paper examines the role of the Indian judiciary in protecting children from sexual abuse through doctrinal development, procedural safeguards, evidentiary reform, digital child-protection jurisprudence, compensation and rehabilitation measures, and institutional accountability. It argues that the judiciary in India performs not only an adjudicatory function but also a norm-shaping and governance function by interpreting child-protection laws purposively, correcting insensitive approaches in trial courts, strengthening the credibility accorded to child testimony, and insisting upon speedy and child-friendly processes. The paper also studies major case law from the pre-POCSO and post-POCSO eras to show how judicial responses evolved from fragmented rape-law principles to a specialised child-rights jurisprudence.¹ At the same time, it identifies continuing challenges such as delay, inconsistent sensitivity, over-reliance on formalism, uneven implementation of special procedures, and the need for stronger digital safeguards against online sexual exploitation of children. The study concludes that an effective judicial role requires not merely conviction of offenders but the creation of a trauma-informed justice process that combines punishment, protection, prevention, and rehabilitation.

Keywords: child sexual abuse; POCSO Act; judiciary; child-friendly justice; Special Courts; victim testimony; rehabilitation; constitutional protection; India; child sexual exploitative and abuse material.

¹ Bhuvan's, *Law of Protection of Children from Sexual Offences in India* (1st edn, Sodhi Publications, New Delhi, 2023).



Introduction

Child sexual abuse in India is not only a criminal wrong but also a constitutional injury to dignity, bodily autonomy, privacy, development, and equality. The Indian legal system historically addressed such abuse through the general criminal law of rape, outraging modesty, unnatural offences, kidnapping, and cruelty, but these provisions were fragmented and often poorly suited to the realities of abuse against children. Before the POCSO Act, courts had to stretch the language of existing penal provisions and procedural safeguards to accommodate the special vulnerability of children who were victims of sexual violence. This produced a body of scattered judicial principles regarding corroboration, delay in lodging FIRs, in-camera proceedings, compensation, and the treatment of child witnesses.

The POCSO Act, enacted in 2012, marked a major statutory turning point by creating a dedicated framework for offences against children, including penetrative and non-penetrative sexual assault, sexual harassment, and the use of children for pornographic purposes. The legislation is expressly child-centric: it is gender-neutral, mandates child-friendly reporting and trial procedures, contemplates Special Courts, protects confidentiality, and incorporates presumptions regarding culpable mental state and commission of certain acts. However, the existence of a strong statute does not automatically guarantee child protection. The real content of rights often emerges through judicial interpretation and institutional enforcement.²

In India, the judiciary performs several interconnected functions in this area. It interprets the scope of offences, lays down procedural standards, reviews acquittals grounded in stereotypes, balances the rights of the accused with the welfare of the child, and monitors the implementation of child-protective laws by state agencies. Through constitutional adjudication and criminal appeals, courts have repeatedly corrected evidentiary myths about sexual violence, rejected victim-blaming approaches, and recognised that children experience the legal process itself as a site of possible re-traumatisation. The judiciary has therefore become central not only in punishing child sexual abuse but also in reshaping the justice system to become more responsive to children's lived experiences.

² Bhukuth A and others (eds), *Child Rights in India: Law, Policy and Practice* (3rd edn, Oxford University Press, New Delhi, 2017)



This paper analyses the role of the judiciary in protecting children from sexual abuse in India. It begins with the legal framework, then examines the principal judicial functions in doctrinal and procedural terms, followed by a discussion of important case law. It finally evaluates the continuing challenges and suggests reforms to deepen child-centred adjudication under Indian law.

Legal framework in India

The constitutional foundation of judicial protection against child sexual abuse lies in Articles 14, 15(3), 21, 23, 39(e), 39(f), and 45 of the Constitution of India, read together as requiring the State to secure children's dignity, development, and protection from exploitation. Courts have treated the right to life under Article 21 as encompassing the right to live with dignity and bodily integrity, and this constitutional commitment informs the interpretation of child-protection legislation. Thus, judicial intervention in child sexual abuse cases is not simply an exercise in criminal adjudication but a constitutional duty to secure effective protection for vulnerable children.

The POCSO Act, 2012 is the principal statutory instrument in this field. It provides a detailed catalogue of offences; criminalises aggravated forms of abuse, especially where the offender occupies a position of trust or authority; mandates the establishment of Special Courts; and requires child-friendly procedures at the stages of reporting, recording of evidence, investigation, and trial. The Act also seeks to preserve the child's privacy and identity, reduce confrontation with the accused, and provide support through interpreters, special educators, and assistance mechanisms where needed. In addition, the statute places mandatory reporting obligations on certain persons and imposes punishment for failure to report sexual offences against children.³

The Information Technology Act, 2000 also intersects with child sexual abuse jurisprudence in the context of online sexual exploitation and circulation of exploitative material. In recent years, judicial interpretation has linked the POCSO framework with Section 67B of the IT Act to respond to digital possession, circulation, and consumption of material depicting minors engaged in sexual activity. This is especially significant because contemporary abuse often extends beyond direct physical assault and includes filming, storage, sharing, and repeated digital victimisation.

Core judicial functions

³ Swetapadma Dash, *Sexual Offences Against Children in India: Understanding the Criminal Justice Responses* (Routledge, London/New York, 2025)



Interpretation of child-protective laws

One of the judiciary's most significant roles is purposive interpretation. Child sexual abuse laws must be interpreted in a way that advances protection rather than defeats it through narrow formalism. Judicial interpretation has consistently emphasised that the POCSO Act is a beneficial, welfare-oriented statute and that its provisions should be understood in light of the vulnerability of children and the power imbalance inherent in sexual offences against them.

This interpretive role is particularly visible where courts have expanded or clarified the meaning of statutory obligations. In the Supreme Court's 2024 decision in *Just Rights for Children Alliance v. S. Harish*,⁴ the Court held that viewing, possession, and storage of child sexual exploitative material can attract criminal liability, and it rejected a narrower reading that would have confined punishment only to dissemination. The Court clarified that Section 15 of the POCSO Act creates distinct offences and that failure to delete, destroy, or report such material can itself amount to an offence in appropriate circumstances. By doing so, the Court adapted child-protection jurisprudence to digital realities and affirmed that victimisation continues through recording, storage, and circulation of abusive material.

The judgment is also notable for its linguistic intervention. The Court suggested that the term "child pornography" inadequately captures the exploitative reality and preferred the expression "child sexual exploitative and abuse material," thereby shifting judicial vocabulary toward a victim-centred understanding. This demonstrates that judicial protection is not limited to conviction and sentencing; it also involves reframing the conceptual language through which legal institutions understand harm.

Development of child-friendly procedures

The judiciary has been central in designing child-friendly procedural norms, even before the POCSO Act expressly codified many of them. A major pre-POCSO milestone was *Sakshi v. Union of India* (2004),⁵ where the Supreme Court, while declining to rewrite the then-existing definition of rape through judicial fiat, laid down guidelines for the recording of evidence in child sexual abuse cases. These guidelines included the use of a screen or arrangement to prevent the child from

⁴ (2024) 2024 INSC 716

⁵ (2004) 5 SCC 518



seeing the accused directly, written submission of embarrassing cross-examination questions to the presiding judge, and the grant of sufficient breaks during testimony. Such directions recognised that ordinary adversarial courtroom design can itself intimidate or silence child victims.

Other judicial interventions likewise underscored the need to shield children from secondary victimisation. In *Sudesh Jhaku v. K.C.J. & Others*,⁶ the court emphasised the need for simple questioning, breaks during testimony, and support from neutral adults or support persons when a child is called upon to depose. These developments helped generate the procedural imagination later embodied in the POCSO framework and showed that the judiciary could serve as an institutional innovator where statutory law remained incomplete.

Today, under the POCSO Act, judges are expected to ensure in-camera proceedings, protect the child's identity, avoid aggressive confrontation, and create an environment in which the child can narrate abuse without fear or humiliation. Judicial insistence on these procedural protections is essential because the mere existence of statutory language does not guarantee that police officers, prosecutors, and trial courts will uniformly follow child-sensitive methods.⁷

Evidentiary reform and credibility of child testimony

A recurring theme in Indian case law is the judiciary's rejection of outdated evidentiary assumptions that undermine survivors of sexual violence. Courts have repeatedly held that the testimony of the victim of sexual assault does not require corroboration as a rule of law if it is otherwise reliable. This principle assumes even greater significance in cases involving child victims, where abuse often takes place in private, leaving little direct eyewitness evidence.

In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* (1983),⁸ the Supreme Court held that minor discrepancies in the testimony of victims are not fatal and that corroboration is not an indispensable prerequisite to conviction in rape cases. In *State of Punjab v. Gurmit Singh* (1996),⁹ the Court strongly criticised trial-court approaches that treated the complainant as of "loose character" and reiterated that reliable testimony of a sexual assault victim can by itself sustain conviction.

⁶ (1996) SCC Del 195

⁷ Singh GK (ed), *Child Rights in India* (Bhumi Publishing, Pune, 2022)

⁸ (1983) 3 SCC 217

⁹ (1996) 2 SCC384



Likewise, in *State of Andhra Pradesh v. Gangula Satya Murthy* (1996), the Court held that minor contradictions or insignificant discrepancies should not be allowed to override the broader probabilities of the prosecution case.

These decisions are foundational to the judicial role in child protection because they counter myths that frequently lead to acquittal: that delay in reporting is suspicious, that children are easily tutored, that absence of injuries indicates consent, or that external corroboration is always necessary. Such judicial corrections are indispensable in a system where child victims may be traumatised, dependent on adults, fearful of disclosure, or abused within homes and institutions.

Speedy trial and Special Courts

The judiciary also plays a structural role in ensuring that POCSO Special Courts function as intended. The POCSO Act mandates Special Courts to exclusively try offences under the statute and aims at speedy trial through a child-sensitive adjudicatory process. Judicial literature on the Act highlights that Special Courts are central to reducing procedural delay and repeated exposure of children to adversarial settings. Judges presiding over these courts are expected to demonstrate sensitivity, training, and awareness of the psychosocial dimensions of child abuse.

The constitutional importance of speedy trial was recognised even before POCSO in *Sheela Barse v. Union of India*,¹⁰ where the Supreme Court held that speedy trial is implicit in Article 21. Though not confined to sexual offences, this principle has direct relevance to child abuse cases because prolonged proceedings can deepen trauma, weaken memory, and expose children to intimidation or coercion by perpetrators. Thus, the judiciary's management of adjournments, examination schedules, and evidentiary recording becomes a substantive form of child protection rather than a mere matter of docket control.

Compensation, rehabilitation, and victim support

Protection from child sexual abuse does not end with conviction. Courts have increasingly recognised that survivors require legal aid, compensation, counselling, educational support, and long-term rehabilitation. In *Delhi Domestic Working Women's Forum v. Union of India* (1989),¹¹ the Supreme Court laid down guidelines requiring legal representation, information about that right

¹⁰ (1986) 3 SCC 596

¹¹ (1995) 1 SCC 14

at the police station, anonymity of rape victims, and fair financial compensation, even emphasising that compensation should be available whether or not conviction takes place. Though the case did not arise under POCSO, its victim-centred logic significantly shaped later sexual violence jurisprudence relevant to child victims as well.

The Supreme Court's 2024 ruling in *Just Rights for Children Alliance* extended this orientation to online exploitation by directing psychological counselling, therapeutic interventions, and educational support for victims of exploitative material involving children. The Court further called for comprehensive sex education and awareness programmes, recognising that protection requires preventive and rehabilitative measures alongside prosecution. Such directions show that the judiciary can create a broader ecosystem of care around the child, especially where executive implementation is slow or fragmented.

Supervision of institutions and systems

A further dimension of judicial role lies in supervision of institutions where children are vulnerable. Cases involving orphanages, homes, schools, and detention spaces have shown that abuse is frequently enabled by institutional power and silence. In *State v. Freddy Peats and Others*, concerning sexual abuse in an orphanage, the trial was conducted in camera and the court took the anonymity and dignity of victim boys seriously while imposing proportionate punishment for grave and repeated abuse. In the Anchorage Home litigation, the Supreme Court restored the conviction of those responsible for abuse in an orphanage and thereby signalled that institutional settings do not dilute criminal liability.

Similarly, in *Sangeeta Punekar v. State of Maharashtra*,¹² the experience of abuse in children's institutions led to judicial reinforcement of licensing and oversight obligations. Judicial scrutiny of institutions is especially important because children in such spaces are often dependent, socially marginalised, and unable to complain effectively against authority figures. The judiciary thus acts not merely as a forum for private complaints but as a constitutional safeguard against institutional impunity.

Important case law

¹² (2024) SCC Online Bom 189



Pre-POCSO jurisprudence

The pre-POCSO period is important because it generated many of the doctrinal seeds later incorporated into statutory child-protection law. In *Ghanashyam Misra v. State* (1956), the Orissa High Court enhanced the sentence of a school teacher who raped a ten-year-old girl in school and also ordered compensation, recognising both abuse of trust and the devastating impact of the offence on the child's future life. This early case illustrates the judiciary's awareness that abuse by a person in authority aggravates culpability.

In *Gurcharan Singh v. State of Haryana* (1972),¹³ the court held that absence of marks of violence on a girl under sixteen was immaterial and that the victim could not be considered an accomplice.[cite:15] This moved the law away from coercion-focused evidentiary assumptions inappropriate to child victims. In *Harpal Singh v. State of Himachal Pradesh* (1980),¹⁴ the Supreme Court condoned delay in FIR on the reasoning that family hesitation in reporting sexual offences is understandable and that such delay does not necessarily weaken the prosecution where a reasonable explanation exists.

Other important rulings reinforced survivor-centred principles. *Imratlal v. State of Madhya Pradesh*¹⁵ held that conviction can rest solely on the victim's testimony if it is credible and that emission of semen is not necessary to prove rape. *State of Haryana v. Prem Chand* rejected any relevance of the victim's character or reputation to guilt or punishment. These holdings helped dismantle stereotyped judicial approaches that historically harmed women and children alike in sexual offence cases.

The controversial *Mathura rape case* is also significant, though it is remembered mainly for the Supreme Court's acquittal and the public protests that followed. According to the account of landmark cases compiled by Aarambh India, the resulting public outcry eventually contributed to the Criminal Law (Second Amendment) Act, 1983. This episode demonstrates that even judicial failure can become a catalyst for legal reform, and it remains a cautionary marker of why child- and survivor-sensitive adjudication is indispensable.

¹³ AIR 1972 SC2661

¹⁴ (1980) 1 SCC 560

¹⁵ 1964 MPLJ (Cri) 1



Post-POCSO jurisprudence

After the POCSO Act came into force, courts increasingly interpreted the statute in ways consistent with its protective purpose. Scholarly and judicial summaries note that courts have recognised the importance of speedy and in-camera trials, the reliability of child testimony, and the need to meaningfully implement procedural safeguards under the Act. These developments have helped convert POCSO from a paper framework into a more responsive adjudicatory system, though implementation gaps remain.

A major modern development is the Supreme Court's decision in *Just Rights for Children Alliance v. S. Harish* (2024). The judgment resolved a conflict over whether mere storage or viewing of exploitative material involving minors amounts to an offence and held that possession, viewing, and failure to delete, destroy, or report such material may attract liability under Section 15 of the POCSO Act and Section 67B of the IT Act. The Court further stated that High Courts must be slow and circumspect in quashing POCSO cases and must consider the statutory presumption regarding culpable mental state under Section 30 once foundational facts are established. The case is highly significant for demonstrating how the judiciary can update child-protection law to match digital forms of exploitation.

The post-POCSO period has also seen continued use of aggravating circumstances where abuse occurs in contexts of trust, authority, or extreme vulnerability. A 2025 Supreme Court judgment concerning offences against a four-year-old child under the POCSO Act reflects continuing judicial engagement with the interpretation of aggravated penetrative sexual assault and concurrent punishments under POCSO and the Penal Code. Even where sentencing outcomes vary, the Court's analysis confirms that the judiciary remains central in classifying the gravity of abuse, harmonising overlapping statutory provisions, and supervising trial-level application of POCSO.

Critical assessment

The judiciary's contribution to the protection of children from sexual abuse in India is substantial and multidimensional. It has strengthened substantive law through purposive interpretation, improved procedure through child-friendly guidelines, corrected evidentiary bias, and responded to new forms of digital exploitation. It has also used constitutional values of dignity and fairness



to ensure that child victims are not reduced to mere witnesses in a criminal trial but are treated as rights-bearing individuals entitled to support and rehabilitation.

At the same time, judicial protection is uneven in practice. Studies and legal analyses point to continuing challenges such as inadequate training of judicial officers, delay in recording evidence, infrastructure deficits in Special Courts, and uneven implementation of child-friendly procedures. Some trial courts continue to rely excessively on medical evidence, overemphasise minor inconsistencies, or fail to appreciate the psychological reasons for delayed reporting and fragmented narration by child victims. This means that progressive appellate jurisprudence does not always translate into sensitive trial-level adjudication.¹⁶

There is also an important tension between due process for the accused and the protective presumptions contained in POCSO. The judiciary must preserve fairness without allowing procedural formalism to dilute child protection. The best judicial decisions strike this balance by requiring proof of foundational facts, ensuring dignified cross-examination, and resisting both prejudice and insensitive scepticism.

Further, the digital environment has radically expanded the terrain of abuse. Recording, possession, circulation, and repeated viewing of exploitative material can perpetuate victimisation long after the original act. Judicial recognition of this reality in *Just Rights for Children Alliance* is a major advance, but effective child protection now requires sustained judicial coordination with cyber-investigation systems, platform accountability, reporting mechanisms, and therapeutic support structures.

Suggestions for reform

The role of the judiciary can be strengthened through a set of focused reforms.

- First, specialised and continuing training should be mandatory for judges, prosecutors, and court staff dealing with POCSO matters, including modules on child psychology, trauma, disability, digital evidence, and appropriate questioning techniques.

¹⁶ Bhukuth A and others (eds), *Child Rights in India: Law, Policy and Practice* (3rd edn, Oxford University Press, New Delhi, 2017).



- Second, every Special Court should have child-friendly infrastructure, including separate waiting areas, video-link facilities where appropriate, and support-person mechanisms to minimise intimidation and repeated exposure to the accused.
- Third, appellate courts should continue to discourage stereotyped reasoning and should systematically correct trial-court findings based on myths about delay, injury, or the so-called character of the victim.
- Fourth, judicial orders should more consistently integrate compensation, counselling, educational continuity, and long-term rehabilitation into the relief structure for child survivors.
- Fifth, the digital jurisprudence emerging from recent Supreme Court decisions should be accompanied by standard operating procedures for preservation of electronic evidence, intermediary reporting, and victim-sensitive handling of online sexual exploitation cases.

These reforms would help the judiciary move from reactive adjudication to a more fully integrated child-protection model that combines adjudication, prevention, and restoration.

Conclusion

The judiciary in India occupies a pivotal position in the protection of children from sexual abuse. Its role extends far beyond deciding guilt or innocence in individual prosecutions. Through constitutional interpretation, evidentiary reform, procedural innovation, supervision of Special Courts, and expansion of digital child-protection jurisprudence, courts have helped construct a child-centred legal response to sexual abuse. Landmark cases such as *Delhi Domestic Working Women's Forum*, *Sakshi*, *Gurmit Singh*, and *Just Rights for Children Alliance* show that judicial engagement has progressively transformed both the language and practice of justice in this field.



References:

1. Aparna Bhatt v. State of Madhya Pradesh, SCC Online SC 168 (2021)
2. Gupta, S., & Parekh, U. (2022). The Protection of Children from Sexual Offences Act, 2012: An Overview and Intricacies. *International Journal of Health Research and Medico-Legal Practice*.
3. Kaur, H., & Thalwal, H. (2025). Child-friendly justice under the POCSO Act: A critical analysis of implementation barriers and reform imperatives. *International Journal of Research Publication and Reviews*, 6, 2506.
4. Khan, M. A. (2024). A study of victim compensation in India with emphasis on judicial activism. *International Journal of Law Management & Humanities*, 7(1).
5. Sakshi v. Union of India, AIR 2004 SC 3566 (2004).
6. Sinha, S., & Pandey, S. (2023). From rights to realities: The constitutional framework for child welfare in India. *ShodhKosh: Journal of Visual and Performing Arts*, 3, 1184.
7. Supreme Court of India. (2025). *Handbook on child rights and judicial sensitization*. Juvenile Justice Committee.
8. Tiwari, S., & Kumar, S. B. (2025). Child sexual abuse laws in India: Judicial impact and evolving jurisprudence. *LawFoyer International Journal of Doctrinal Legal Research*, 3, 818.
9. Venkatesan, V. (2026, February 19). Why the Supreme Court wants new rules for sexual offence trials. *Supreme Court Observer*.