GUARDING THE SHIELD: BALANCING CHILD SAFETY AND THE MISUSE OF THE POCSO ACT 2012 IN MATRIMONIAL DISPUTES

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INTRODUCTION

Sometimes, a child's safety is threatened when they are caught in their parents' dispute. When a prolonged matrimonial dispute escalates against one parent, it leads to allegations of sexual abuse against the other parent, leaving the child caught in the conflict. The child, who should be protected from such disputes for their well-being, finds themselves at the centre of such prolonged litigation and conflicts.

The Protection of Children from Sexual Offences Act, 2012(POCSO Act) was enacted to give children firm and child-sensitive protection against sexual offences, serving as a shield. **Section 10** of the POCSO Act provides punishment for aggravated sexual assault, while **Section 22** of the POCSO Act provides for punishment for false complaints or false information in specified circumstances.

However, allegations under these provisions may also arise in the context of prolonged matrimonial and custody disputes, raising concerns regarding the misuse of the criminal process.

What happens when a law built to protect children becomes a means of misusing the legal process in a custody battle?

The existence of a matrimonial dispute cannot by itself establish that an allegation made under this Act is false. Judicial safeguards have nevertheless emerged to prevent the misuse of criminal proceedings under this Act in such disputes.

This Article therefore examines *whether these safeguards can prevent misuse without delaying or weakening the protection available to genuine child victims*, particularly where their

application involves expert evaluation and an assessment of the circumstances surrounding the alleged matrimonial dispute.

II. POCSO ACT AND THE COMPLEXITY OF MATRIMONIAL DISPUTES

Matrimonial and custody disputes present a particularly complex context for the application of the POCSO Act. When Allegations of sexual abuse against their child are made against a parent during an ongoing dispute between the parties, the court is required to consider whether such allegations are genuine, while also examining the circumstances in which such allegations against a party arose. During such situations, the child may become the subject of both the criminal proceedings and custody battles, adversely affecting their mental and emotional well-being.

The issue is not a recent one. In *Suhara vs Muhammed Jaleel,* the Kerala High Court expressed its cautions against treating the mere registration of a POCSO case against a parent as proof of the truth of the allegation, particularly when the custody of the child was already in dispute. The Court recognised that there is a possibility that such an allegation may either be genuine or may arise from the circumstances of the custody dispute, thereby requiring the surrounding facts to be carefully examined.[1]

A similar concern arose in the case of *Govind Shivkumar v State of Karnataka*, where the Court dealt with POCSO proceedings arising in the context of a dispute between the parents concerning the custody of the child. The Court found the proceedings against the petitioner to be an abuse of the process of law and emphasised the manner in which the child had become involved in the conflict between the parents.[2]

These decisions reflect a growing judicial concern regarding the use of POCSO proceedings, including those involving **Section 10 and 22**, in the midst of matrimonial and custody disputes. Against this backdrop, the Recent decision of the Supreme Court in R vs E & Anr marks a significant development. The Court laid down safeguards to prevent such misuse of the Act, which has long been a concern where proceedings under the POCSO Act, 2012 have arisen in the context of prolonged matrimonial and custody disputes.[3]

[1] Suhara v Muhammed Jaleel 2019 SCC OnLine Ker 1237
[2] Govind Shivkumar v State of Karnataka, Criminal Petition No 3749 of 2022
[3] 'R' v 'E' & Anr 2026 INSC 1049.

III. THE PROVIDED JUDICIAL SAFEGUARDS AND THEIR LIMITS

In the case of *R vs E & Anr* [24th September 2026] , the Supreme Court addressed the concern regarding the misuse of POCSO Proceedings in matrimonial and custody disputes and laid down safeguards for cases where such allegations arise in the background of a prolonged matrimonial dispute.

The Courts prescribe a minimum standard for determining whether these safeguards would apply and also require the police to examine the existence of a matrimonial dispute before taking such coercive measures.[4]

The Court in this case also recognised the difficulties faced by the investigating officers in distinguishing between a genuine allegation and one arising from an ongoing matrimonial conflict. To assist in this process, the Court provided for an expert evaluation of the child, subject to an exception, that is, when there are palpable materials making such evaluation unnecessary.

This expert's evaluation is intended to assist the investigation and is not conclusive of the genuineness of the allegation. Similarly, the investigating officer is not bound by the expert's report and must independently assess the materials of the case available.[5]

The Court expressly mentioned that such safeguards don't dilute the purpose of the POCSO Act.[6] Further, the investigation itself here is not brought to a halt merely because the safeguards apply. The Court also clarified that the requirement of expert evaluation does not obstruct the process before the **Child Welfare Committee (CWC)**, including measures concerning the child's care and protection.[6]

The concerns are regarding the practical impact of these safeguards on timely protection. Although the investigation and CWC process continues, the additional assessments of matrimonial circumstances and expert evaluation may, in practice, affect the speed of investigative decisions in genuine cases.

[4] ibid, paras 48(ii), 49 and 58.
[5] ibid, paras 60 and 63.
[6] ibid, paras 47, 62–63

While these safeguards are intended to prevent misuse, the absence of any clear and uniform standard for such verification may result in inconsistency in application of the safeguards by investigating officers.

Therefore, the challenge here is to ensure that these safeguards assist careful investigation without becoming a primary barrier to timely action in genuine cases.

IV. A BALANCED APPROACH

The Safeguards laid down by the Supreme Court are necessary to prevent the criminal process from being misused in matrimonial and custody disputes. However, their application must remain sensitive to the primary object of the POCSO Act, i.e protecting the children from sexual offences. Therefore, there is a need for a balanced approach may therefore be adopted in the following ways:

FIRST, **Verification of matrimonial and custody disputes should remain limited to relevant circumstances**. It should assist the investigating officer in understanding the background of the allegation without becoming a condition for taking necessary protective measures.[7] Since the court has not prescribed a standard for such verification, clear guidelines for police officers, such as the checklist directed in Arnesh Kumar vs State of Bihar, would be able to reduce inconsistent application of these safeguards.[8]

SECOND, **Expert evaluation should be conducted promptly and treated only as an investigative aid.** The Court requires the report to be submitted "as expeditiously as possible", but prescribes no time frame, so prescribing a reasonable time will help in protecting the child.[9] It should not replace the independent assessment of the investigating officer or be treated as conclusive proof of whether an allegation is genuine or false.

THIRD, **Protective measures for the child should remain independent of the safeguards applicable to the criminal investigation.** The Court has already directed that the expert evaluation must not disturb the Child Welfare Committee's process, so what matters is effective implementation in practice. The continuing role of the Child Welfare Committee is therefore important for ensuring the care and protection of the child shouldn't be compromised

[7] ibid, paras 48(ii) and 58.
[8] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, para 11.2, as discussed in 'R' v. 'E', para 53.
[9] ibid, paras 61 and 63.

while the circumstances surrounding the allegation are being examined.[10]

The objective should not be to choose between preventing misuse and protecting the children, as both are objectives and a balance should always be maintained.

The safeguards provided by the Supreme Court should operate in a manner that protects the integrity of the POCSO framework and also ensures that a genuine child victim must not face an additional procedural barrier to timely protection, as they already face enough emotional and mental pressure.

CONCLUSION

The POCSO Act, 2012 was enacted to provide children with strong and effective protection against sexual offences.

The Act serves as a shield for children, and *'R' v. 'E'* recognises that this shield must not be misused in a parental conflict. The Safeguards against misuse laid down by the Supreme Court recently are therefore important, but their effectiveness ultimately depends upon how they are applied.

The safeguards must assist the investigating authorities in examining the circumstances of a case without creating additional procedural barriers for a child who genuinely requires protection. The continuing role of the Child Welfare Committee and the independent assessment of the investigating officer are therefore important in maintaining this balance.

The real measure of these safeguards will be whether they can prevent the misuse of POCSO proceedings without causing unnecessary delay in protecting the very children for whose protection the Act was enacted.

[10] ibid, para 62.