
CONSTITUTIONALITY OF REVERSE BURDEN OF PROOF IN POCSO ACT, 2012

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“Safety and security don't just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.”

— Nelson Mandela

Introduction

Children constitute a particularly vulnerable segment of society due to their age, emotional immaturity, and dependence on adults, factors which substantially increase their susceptibility to exploitation and abuse. In order to address the absence of a specialised legal framework dealing with sexual offences against children, the Indian Parliament enacted the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).¹The statute seeks to provide comprehensive protection by expressly defining sexual offences against children, prescribing child-friendly mechanisms for reporting, investigation, and trial, and mandating that the best interests of the child remain central to the criminal justice process.²Through these legislative interventions, the POCSO Act has played a crucial role in strengthening child protection laws and has significantly contributed to the evolution of child-centric jurisprudence in India.³

One of the primary objectives of the Protection of Children from Sexual Offences Act, 2012 is to ensure the conduct of child-friendly trials.⁴ Prior to the enactment of this legislation, the criminal justice administration largely operated within a framework designed for adult offenders and adult victims, resulting in children being subjected to procedures that were

¹ The Protection of Children from Sexual Offences Act, No. 32 of 2012, Statement of Objects and Reasons, INDIA CODE (2012).

² Id. §§ 19–37 (providing for mandatory reporting, child-friendly procedures, in-camera trials, and special courts).

³ Independent Thought v. Union of India, (2017) 10 S.C.C. 800 (India); Alakh Alok Srivastava v. Union of India, (2018) 17 S.C.C. 291 (India).

⁴ 240th Report on The Protection of Children from Sexual Offences Bill, 2011 Introduction, Department related Parliamentary Standing Committee on Human Resource Development (2011).

neither sensitive to their age nor tailored to their specific needs. The POCSO Act seeks to remedy this deficiency by introducing special procedural safeguards that minimise trauma and ensure a supportive environment for child victims and witnesses during judicial proceedings,⁵ like in camera proceedings, speedy trials, special courts and also a presumption has been provided that the accused in case of sexual assault has committed the offence unless proved otherwise.

§29⁶ of the Protection of Children from Sexual Offences Act, 2012 introduces a statutory presumption of guilt by mandating that, once prosecution is initiated for an offence under the Act, the Court shall presume the culpability of the accused unless the contrary is established. Further, §30 (2) imposes a heightened evidentiary burden on the defence by requiring the accused to disprove the existence of the requisite mental element beyond reasonable doubt, rather than on the lesser standard of preponderance of probabilities ordinarily applicable to rebuttable presumptions.⁷ These reverse onus provisions represent a significant departure from foundational principles of criminal jurisprudence, particularly the presumption of innocence and the prosecution's obligation to establish guilt beyond reasonable doubt.⁸ But at the same time, in the present legislation, these fair trial principles are not contrary to the fundamental rights and thereby can be held constitutionally valid.

§§ 29 and 30 are in Consensus with Article 14 of the Constitution.

For a statutory provision to be considered consistent with Article 14 of the Constitution of India, it must satisfy the doctrine of reasonable classification. This doctrine requires the fulfilment of two essential conditions: first, the classification must be founded on an intelligible differentia that distinguishes persons or things grouped together from those left out of the group; and second, such differentia must bear a rational nexus to the object sought to be achieved by the legislation.⁹

⁵ *supra note at 1*, §§ 33–38 (providing for child-friendly procedures, in-camera trials, assistance of support persons, and avoidance of aggressive cross-examination).

⁶ *supra note at 1*, § 29.

⁷ *Id.* § 30(2)

⁸ Juhi Gupta, *Interpretation of Reverse Onus Clauses*, 5 NUJS L. Rev. 49, 50 (2012).

⁹ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 (India), *Budhan Choudhry v. State of Bihar*, A.I.R. 1955 S.C. 191 (India).

Application of the Intelligible Differentia test

To pass the intelligible differentia test for a provision, it is necessary to check whether the way in which these provisions are classified from other standard or practised patterns, as intelligible differentia means distinguishing persons or things that are grouped from others left out of the group.¹⁰

The intelligible differentia for imposing the reverse burden in the POCSO Act can be justified on three grounds.

Firstly, the distinction qualifies as positive discrimination. According to Art. 15(3), the State is empowered to make special provisions for safeguarding the interests of women and children.¹¹ The said Act is such an enactment brought into force to curb sexual exploitation and sexual abuse of children.¹²

Secondly, the distinction from other criminal offences has been attributed to acknowledging the seriousness of the offence. The offences are so severe and appalling that this presumption had to be put in place to act as a safety valve, to secure the interests of the victim and in turn to protect the morale of society.¹³

Thirdly, these clauses are also perceived as securing a higher conviction rate than under the rigid standard of proof beyond a reasonable doubt, thereby furthering the goal of deterrence.¹⁴ According to the NCRB¹⁵ records as relied on by the Standing Committee Report¹⁶ Had revealed that there had been a significant increase in sexual offences against children. Shockingly, the conviction rates were also coming down.¹⁷ This trend was concluded as the reason for the increasing tendency to commit offences. Whereas, in the case of sexual offences against women, this was not the case.

¹⁰ N SHUKLA, CONSTITUTION OF INDIA 217 (12th ed., Eastern Book Company, 2013).

¹¹ INDIA CONST. art.15 cl. 3.

¹² *supra note* at 1.

¹³ Noor Aga v. State of Punjab, (India), MALIK, COMMENTARIES ON NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 278 (4th ed., Law Publishers (India) Pvt. Ltd, 2019)

¹⁴ Byron M. Sheldrick, *Shifting Burdens and Required Inferences: The Constitutionality of Reverse Onus Clauses*, 204 U. Toronto Fac. L. Rev. 179, 180 (1986).

¹⁵ National Crimes Record Board, 2010.

¹⁶ 240th Report on The Protection of Children from Sexual Offences Bill, *supra note* 4 ¶1.13,

¹⁷ *Id.* at ¶1.12.

Application of the rational nexus.

A statutory provision must have a rational relation to the object sought to be achieved by the statute in question.¹⁸ The legislative intent of the Act as obtained from the Statement of Objects and Reasons,¹⁹ Is to equip the law to cater to the best interests of the children, ensuring protection and prevention from sexual abuse and exploitation. The sections are an extension of the same, which pursues fair and speedy justice. They favour the victim, recognising the plight and trauma of the hapless child.

The sections at hand aid the victim in two ways.

Firstly, it encourages reporting of offences which otherwise would have gone unreported.

Secondly, it relieves the child from the burden of proving the guilt of the accused and also resolves the issue of difficulty in collecting evidence in such cases. It will be like creating a double-traumatising situation for the child's family, as they have to prove the offence (physical trauma), at the same time, when the child is already going through the mental trauma.

Thus, there exists a rational nexus between the object sought by the Act and §§ 29 and 30, along with intelligible differentia, thereby making the section constitutionally valid under Art.14.

§§ 29 and 30 are in Consensus with Article 21 of the Constitution.

The object of Art.21 is to prevent encroachment upon personal liberty, save in accordance with the law.²⁰ The State is obliged to protect the life of every person and cannot wash its hands of the responsibility.²¹ Hence, the State enforces proportional checks and restraints on liberty to ensure the same. These act as a safeguard to the individual rights and interests.²²

The concept of fair trial as envisaged under Art.21²³ Entails the familiar triangulation of the interests of the accused, the victim and the society. The interests of society are not to be treated

¹⁸ Roop Chand Adlakha v. DDA, AIR 1989 SC 307. (India).

¹⁹ Protection of Children from Sexual Offences Bill, 2011, Statement of Objects and Reasons, No. 14, 2011.

²⁰ G. Gurunadha Reddy v. A. P. Road Transport Corporation, AIR 1999 AP 179.

²¹ Jagar Dhar Sharma v. State of Assam, AIR 2003 Gau 101. (India).

²² Maneka Gandhi v. Union of India, AIR 1978 SC 697. (India).

²³ Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Ors, (2003) 6 SCC 230. (India).

completely with disdain.²⁴ A fair trial is aimed at ascertaining the truth for all concerned.²⁵

Presumption of innocence indeed is key to the principle of a fair trial.²⁶ And it is the basis of the burden of proof.²⁷ However, this principle is not absolute. It is subject to exceptions, and the validity of its non-application can be verified by the compatibility test.

Presumption of innocence is not an absolute right.

Indian criminal jurisprudence offers allegiance to the concept of presumption of innocence, and the same has been recognised under Article. 20 and 21 of the Constitution.²⁸ However, it is to be noted that the presumption of innocence is not an absolute right.²⁹ It is not a constitutional guarantee and can be dispensed with by legislative imperatives and action.³⁰ This golden rule is subject to the defence of insanity, and also to any statutory exception.³¹ subject to the satisfaction of the two-prong test of compatibility,³² i.e., whether the reversal is proportionate, necessary and reasonable to achieve the legitimate objective for which the reversal is employed.³³

Existence of a 'legitimate public objective'.

The SC held that the extraordinary measure of reverse burdens is constitutional in *Noor Aga v. State of Punjab*.³⁴ While upholding the Constitutional Validity of Reverse Burden of Proof in the NDPS Act. However, it must be justifiable by social control concerns.³⁵

Presumption of innocence is an element of personal liberty, but individual liberty must be subject to social interest to ensure the security of the State. Sexual exploitation and sexual abuse of children are heinous crimes that need to be effectively addressed.³⁶ Express statutory provisions are necessary to tackle such atrocities. Therefore, a reverse burden is justified by its

²⁴ D. D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 4672 (9th ed., Lexis Nexis, 2015).

²⁵ *Zahira Habibulla H Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (India).

²⁶ *Babu v. State of Kerala*, (2010) 9 SCC 189 (India).

²⁷ *Jose v. The Sub-Inspector of Police, Koyilandy and Ors.*, AIR 2016 SC 4581 (India).

²⁸ KAILASH RAI, CONSTITUTIONAL LAW OF INDIA 215 (11th ed., Central Law Publications, 2015)

²⁹ *Krishna Janardhan Bhat v. Dattatreya G. Hegde*, AIR 2008 SC 1325 (India).

³⁰ *P. N. Krishnalal v. Government of Kerala*, 1995 SCC (Cri) 466 (India).

³¹ *Woolmington v. DPP*, [1935] UKHL 1 (U.K.).

³² *Victor Tadros & Stephen Tierney, The Presumption of Innocence and the Human Rights Act*, 67(3) Mod. L. Rev. 402, 407 (2004).

³³ *Sheldrake v. DPP*, [2005] 1 AC 264 (Austl.).

³⁴ *Noor Aga*, *supra note at 13*

³⁵ *id.*

³⁶ Protection of Children from Sexual Offences Act, Preamble, *supra note 1*

pressing necessity,³⁷ Where society is threatened with imminent and severe harm, heightening the need for law enforcement.³⁸

Further, in case of a significant proof imbalance, reverse burdens stand justified.³⁹ The most crucial factor in deciding if a proof imbalance associated with an offence supports a reversal of the legal burden of proof is the degree of the burden placed on the prosecution. That is, for crimes under the POCSO Act, the prosecution would find it exceptionally difficult to prove guilt to the usual standard. On the other hand, here the innocent accused would be able to discharge the reverse burden easily. It is due to the existence of peculiar knowledge.⁴⁰ Here, peculiar knowledge is the accused's state of mind.⁴¹ This aids the accused to disprove his culpability by presenting facts exclusively within his knowledge.⁴² Hence, the reversal of the burden, with respect to the culpable mind of the accused, is valid as it levels the proof imbalance.

Satisfies the proportionality test.

Though the sections employ the reverse burden of proof, manifestly, they do not dispense the prosecution from its burden.⁴³ The prosecution still has to prove the charges beyond a reasonable doubt. This standard of proof makes the provisions equally beneficial to the accused, creating a balance between the state's resources and the accused. Although the negation of the accusations placed is also beyond a reasonable doubt, the legislators are compelled to impose a greater standard of proof as the gravitas of the offence and its impact on society are significant. Thereby, these sections are deemed to be appropriate.

Further, the accused can submit proof of reasons for false claims.⁴⁴ Under §22 of the Act.⁴⁵ In essence, the reverse burden serves the same goals as the presumption of innocence in its ordinary operation. Both aim to achieve a fair balance between the general interest of the community and the personal rights of the individual.⁴⁶ Thus, in cases of crimes that gravely

³⁷ D Hamer, *The Presumption of Innocence and Reverse Burdens: A Balancing Act*, 66 C.L.J 142, 148 (2007).

³⁸ Victor Tadros & Stephen Tierney, *The Presumption of Innocence and the Human Rights Act*, 67(3) Mod. L. Rev. 405 (2004).

³⁹ D Hamer, *The Presumption of Innocence and Reverse Burdens: A Balancing Act*, 66 C.L.J 142, 158 (2007).

⁴⁰ *Id.*

⁴¹ Regina v. Edwards, [1975] 1 Q.B. 27 (U.K.).

⁴² S. E. Salako, *Strict Criminal Liability: A Violation of the Convention?*, 70 JCL 531, 533 (2006).

⁴³ Naresh Kumar v. State of Himachal Pradesh, (2017) 15 SCC 684. (India).

⁴⁴ Subrata Biswas & Anr. v. The State, 2019 SCC OnLine Cal 1815 (India).

⁴⁵ Protection of Children from Sexual Offences Act, §22, *supra note at 1*.

⁴⁶ Brown v. Stott, [2003] 1 A.C. 681, 704 (Austl.); AHARON BARAK, PROPORTIONALITY: CONSTITUTIONAL

affect and harm society, it is necessary to dispense with the burden of the prosecution.⁴⁷ The offences which the Indian judiciary has recognised as public welfare offences, it has deemed reverse onus clauses to be necessary to prevent such crimes.

Conclusion

The principle that a person should be presumed innocent until proven guilty is a fundamental principle of procedural fairness in penal law jurisprudence.⁴⁸ Its justifications lie in the socio-legal consequences of convicting an individual for the commission of a crime. This principle of burden of proof acts as a protection against erroneous convictions and ensures that an accused is not oppressed by the immense power and resources of the State.⁴⁹

The opposite rule – a presumption of guilt – imposes an unfair burden on the accused that requires him to prove his innocence, failing which he is convicted.⁵⁰ Such a burden is envisaged by reverse onus clauses or reverse burdens, which supplant the deified presumption of innocence with the grossly unjust presumption of guilt.⁵¹

In the present context, Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012 are intended to further a broader legislative objective by seeking to balance the State's constitutional obligation to protect children with the procedural safeguards guaranteed to the accused. The fairness of these reverse burden provisions may be examined through the application of the tests of compatibility and proportionality, which assess whether the statutory measures are appropriately tailored to achieve the legislative purpose without imposing disproportionate restrictions on the rights of the accused⁵². When tested against these standards, the reversal of the burden of proof under the POCSO framework can be defended as a justified and narrowly circumscribed deviation from traditional principles of criminal jurisprudence.⁵³

RIGHTS AND THEIR LIMITATIONS 435 (1st ed., Cambridge University Press, 2012).

⁴⁷ The Trial and Punishment of Social and Economic Offences, Law Commission of India 47th Report 96 (1972), <http://lawcommissionofindia.nic.in/1-50/Report47.pdf>.

⁴⁸ ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW 72 (6th ed2009).

⁴⁹ Victor Tadros & Stephen Tierney, *The Presumption of Innocence and the Human Rights Act*, 67(3) Mod. L. Rev. 402 (2004).

⁵⁰ LAW COMMISSION OF INDIA, 47TH REPORT- THE TRIAL AND PUNISHMENT OF SOCIAL AND ECONOMIC OFFENCES 2, 4 (1972)

⁵¹ Juhi Gupta, *supra note at 8*.

⁵² AHARON BARAK, PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS 131–36 (1st ed., Cambridge University Press 2012)

⁵³ Aparna Chandra, *Proportionality in India: A Bridge to Nowhere?* 9 NUJS L. Rev. 45, 58–60 (2016).

Secondly, the procedure established by law is reasonable. It prescribes a procedure, and it aligns with Art. 14. The procedure satisfies the requirement of Art. 14; hence, it is a constitutionally valid procedure.

Accordingly, it may be reasonably concluded that these provisions withstand constitutional scrutiny and can be regarded as constitutionally valid. While the reverse onus clauses mark a departure from traditional criminal law principles, such deviation is justified by the compelling state interest in protecting children from sexual offences, the inherent evidentiary difficulties associated with such crimes, and the presence of judicially evolved safeguards ensuring fairness in trial. Consequently, the provisions represent a constitutionally permissible balance between societal interests and individual rights.