
TECHNICAL FORMALISM VS SUBSTANTIVE JUSTICE: A CRITIQUE ON KULDEEP SINGH SENGAR'S SUSPENSION OF LIFE SENTENCE

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ABSTRACT

The ever long struggle between technical formalism and substantive justice is an important challenge in the criminal justice system in India. This paper is carrying out a critical analysis of the judgment of High Court in the case of Kuldeep Sengar and the importance here is given to the suspended sentence that was given to him by the courts. It makes a detailed analysis of the factual background and evidentiary findings, which were recorded by the Trial Court, explaining the seriousness of the offences, the nature of the conviction and the conditions under which the sentence was passed. Against this backdrop, the paper observes that the High Court decision to stay the execution was based on a disproportionate prioritization of technical considerations to the detriment of substantive justice, the rights of victims as well as public confidence in the judiciary. The paper then goes on to analyze the Supreme Court's stay of the suspended sentence as a form of corrective judicial intervention that promotes the primacy of substantive justice over procedural and technical formalism. Through this examination, the paper adds to the broader debate regarding judicial discretion in sentencing and may contribute to the broader debate regarding public policy coordinates when it comes to sentencing and the balance between process safeguards and satisfying justice.

Keywords: Technical Formalism; Substantive Justice, Suspension of Sentence, Judicial Discretion, High Court Criticism, Supreme Court Intervention, Criminal Justice System, Victim Rights.

INTRODUCTION:

The Unnao rape incident turned into a major point of contention between technical legal formalism and the demand of substantive justice to the victim by the Indian justice system. The legal standoff in the current issue is that despite the Delhi High Court having applied normative technical approach by narrowly construing the meaning of the term public servant in a restricted sense of the meaning of the word, according to the Supreme Court, there is a move towards contextual substantive meaning. The current threat of Technical Formalism¹ is that of introducing a legal loophole, in which the sheer socio-political power of an elected representative made it hidden in the face of the lack of an official classification within the administration. On the contrary, the principle of substantive justice² justifies that law is constitutive of the realistic nature of power and the protective purpose of special laws such as POCSO Act.

This dilemma begs an underlying question of contemporary jurisprudence: shall the judiciary remain faithful to the letter of archaic criminal law, or shall it remain open to flex with its interpretative instruments so as to ensure that the degree of an offence is accurately compensated by the actual degree of dominance of the person who perpetrates it? To offer a comprehensive discussion, this paper is divided into a number of thematic sections, which discuss the interaction of technical formalism with the Substantive justice. This introduction is followed by the summary of the second section that presents the Unnao Case that resulted in the conviction of Kuldeep Singh Sengar. The Third Section is a summary of the decision of the High Court on the suspension of sentence. The critical discussion of the technical formalism of the High Court is also described in the Fourth Section. The Fifth section looks at the intervention of supreme in the view of substantive justice. Finally, the paper has ended by evaluating the implications on the larger scale of the victim- centric jurisprudence as it ensures that technical statutory loopholes are not misused to undermine the legal duty of protecting the children.

GENESIS OF THE CASE: A JOURNEY TO CONVICTION.

The case does not fit within the paradigm of a typical criminal story³; it is a crude look

¹ Frederick Schauer, *Formalism*, 97 Yale L.J. 509(1998).

² E.W. Thomas, *Fairness and Certainty in Adjudication: Formalism v. Substantialism*, 9 Otago L.Rev.(1999).

³ CJP Team, *The Indomitable Spirit of the Unnao Rape Survivor A Timeline of the Unnao Rape Case*, CJP, (Dec. 20, 2025, 4:35 PM) <https://cjp.org.in/the-indomitable-spirit-of-the-unnao-rape-survivor/>.

at the use of power that was abused against the helpless. It became a call of women to the dignity, and then it became a strong demonstration of failure of a system, a criminal justice mechanism. At the heart of the case is the purported sexual assault of a minor by one of the most influential political leaders whose office granted one not only power but also a certain level of criminal impunity. Although the alleged assault is a serious crime, the fact that state institutions are also involved was more harmful. Instead of speeding up the protection of the victim, the state apparatus seemed powerless; it failed to meet its constitutional duty to listen to complaints, it took long to file First Information Reports, and it silenced the aggrieved party. The victim, in turn, did not receive treatment as a supposed offender but was the subject of constant investigations and pressure. Continuing her quest to seek justice, the case became part of a more threatening stage. The immediate relatives of the victim then were the targets of abuse exercised on them by authority. Her father died in custody which along with the brutality of police officers spread throughout the social world. A few minutes later, the accident occurred that took the lives of the close relatives and the victim was left with serious injuries.⁴

These events were not accidental; all of them were a systematic perversion of justice organized by the political power.⁵ With the growing public outrage, the issue shifted past a personal grievance issue and turned into a cutting commentary of institutional justice and a clarification of how marginalized victims are silenced by those in authority. It was only after mass public and media pressure that the investigative jurisdiction of the case was passed over to an independent investigative agency. The crimes under question are at the top of culpability in Indian criminal law, as they appeal to the provisions of the Indian Penal Code, 1860, as well as the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The offenses committed against minors are considered to be the most outrageous, as the violation of the foundations of basic constitutional provisions of dignity, equality and individual freedom, guaranteed by Articles 14, 19 and 21.⁶ Section 376 of the IPC under which the parliament has set up strict penalties, is reinforced by POCSO in crimes against children. This increases the seriousness of the crime when it comes under aggravated types of penetrative sexual assault in

⁴ Omar Rashid, *U.P. rape victim's dad dies in custody BJP MLA in U.P. accused of gang-rape*, THE HINDU, (Dec. 20, 2025, 5:00 PM), <https://www.thehindu.com/news/national/rape-victims-dad-dies-in-custody/article61868296.ece>

⁵ Shahid Ahmad, Shanthi Nadarajan and Ahmed Shamsul Bahari, *Silencing of Rape: How rape events and victims of rape are treated by the media and fiction*, 36 J. Komunikasi: Malay. J. Comm. 419 (2020).

⁶ P. Kapur, *Girl Child Abuse: Violation of her Human Rights*, 25 Soc. Change 3 (1995).

Sections 5 and 6 of the POCSO Act.⁷ In particular, Section 5(b) acknowledges a sexual crime by a Public Servant as an aggravated crime. In enacting this provision, Parliament clearly indicated that misuse of power to perpetrate a sexual offence against a minor will be a two-fold violation: the first one being a violation of the dignity of a victim and the second one, a violation of the trust of the populace. Consequently, Section 6 provides a very harsh penalty, up to life imprisonment, and thus, this portrays the strict attitude of the law.

In an historic ruling made in December 2019, the special CBI Court gave life sentence on heinous nature of the offence committed and betrayal of trust of the people. The trial court held that the accused, Kuldeep Singh Sengar, was a sitting Member of Legislative Assembly, which made him a “Public Servant” in position of authority, which aggravated the seriousness of the crime in section 5(c) of POCSO ACT and 376(2) of IPC. According to the court, in addition to committing aggravated form of Sexual Assault, the convict used his political authority to threaten the members of the family of the victim. The court noted that in the imposition of the maximum sentence, there were no mitigating circumstances and that the offence in question was the deliberate abuse of power that should be accompanied with a heavy sentence.⁸

HIGH COURT: SUSPENSION OF SENTENCE:

In 2019, the minor girl rape and kidnapping case was appealed by the convict, Kuldeep Singh Sengar, who was found guilty at Delhi High Court. The Delhi high court on December 23 2025 suspended, in the pendency of appeal, the life sentence of the Appellant due to the purpose that the necessary elements to prove the appellant guilty of the provisions of POCSO ACT have not been established.⁹ The Court held that since he was a MLA, prima facie he does not fall under the definition of “Public Servant” in the explanation of POCSO ACT. The trial court used the meaning of the Prevention of Corruption Act to classify M.L.A as the public service. The High Court was of the view that definition of Public Servant provided in section 2(2) of POCSO ACT should be applied only to IPC, CrPC, JJ Act or IT Act but not to a statute establishing that M.L.A was a Public Servant. To this effect, the High Court ruled that an

⁷ Naish Zameer, *Protection of Children from Sexual Offences Act (POCSO) 2012: A Critical Analysis*, 3 Indian J. Integrated Rsch. L. 1 (2023).

⁸ State (CBI) v. Sengar, SC No. 596/2019 (Dist. and sessions judge, West district, Tis Hazari Courts, Delhi, Dec.16, 2019) (India).

⁹ *Kuldeep Singh Sengar v. CBI*, 2025 LiveLaw (Del) 1765 (Dec. 23) (India) at 52.

aggravated offense of penetrative sexual assault at the aggravated level as enshrined in Section 5(c) that sufficed the lifetime imprisonment should not be applied.¹⁰

The big facet of legal argument also entailed inconsistency in the age of the victim during the act of commission of offence, which directly influenced the applicability of POCSO ACT. Defense raised concerns over the contradictory documents and argued that although some school records indicated that she was a minor(born Aug 17, 2021), other government documents suggested that she was born in July 1998, which meant that she would be major by the time she committed the crime. They further argued that the ossification and medical tests took the argument in favor of the argument that the victim is not a minor when they commit the offence. As the Court acknowledged the main part of the submissions of rivalry on the issue of age-related discrepancies, factual disputes in question would be resolved at the appeal stage.¹¹

The Court made additional stress on the fact that the Appellant had already served a substantial term of imprisonment since he had served about 7 years and 5 months in Prison as of December 2025. The Court observed that this term exceeds the minimum sentence of seven years of penetrative sexual assault that was in place during the time of commission of offence as on 2017. The Court judged that extending the imprisonment of an individual whose appeal has been pending excessively long period of time would be interpreted as travesty of Justice and as a breach of the Constitutional right to trial within a short period of time in Article 21.¹²

CRITICAL ANALYSIS IN THE CASE OF SENGAR:A DISPUTED TECHNICAL FORMALISM.

The sequence in which Kuldeep Singh Sengar has been suspended is indicative of a serious deviation of a long-established Judicial propriety in the aggravated sexual offence case. Although the High Court has the discretionary power to suspend the sentence according to section 389 of Criminal Procedure Code (now disposed of according to section 430 of BNSS), its application in the cases of life imprisonment has historically been institutionally controlled and sternly warned against. In the instances more specifically with sexual violence, normative

¹⁰ *Ibid* 41.

¹¹ *Ibid* 50.

¹² *Ibid* 50.

obligation with respect to upholding substantive justice and public confidence in legal system is in addition to the procedural authority of judicial discretion.

A. Caution by the Courts in Suspension of Life Sentence:

The jurisprudence of the Supreme Court as declared in the landmark cases of *State of Haryana vs Hasmat*¹³ and otherwise was reiterated in *Kishori Lal vs Rupa*¹⁴ cases, states that the suspension of sentence is only granted in exceptional cases in the cases of life imprisonment. This relief should be given when the court of appeal is convinced of a factual or legal error of patent nature in the conviction. The mistake should be of sufficient magnitude that when heard finally constitutes a case of acquittal. In the case in point, the logic that the High Court uses does not undermine the fundamental conclusion of sexual violence. Instead, the suspension is based on a thin-drawing technical enquiry of whether or not the appellant is at the purview of section 21 of the IPC of being a public servant in order to invoke section 5(c) of POCSO ACT. Although this interpretation may be admitted, the basis of conviction is not undermined. The primary facie appraisal of the High Court is still mostly unaddressed the finding of penetrative sexual assault subject to life imprisonment as stated in sections 3 and 4 of POCSO ACT.

B. Sexual Violence:

The Uncontested Factum: The most disastrous thing about the suspension order is that it does not deal with the substantive determinations of sexual assault by the trial court. The High Court makes it easy to apply a limited technical meaning to obscure a factual breach of the dignity of the victim by making a specific narrow jurisdictional and classificatory matter the key to its exercise. This technical narrow interpretation does not have any influence on the testimony of the victim, as it proved to be credible and supported by evidence of penetrative sexual assault by the trial court. This practice is not in harmony with the principle established in *State of Maharashtra vs Madhukar Narayan Mardikar*(1991),¹⁵ which is authoritative that neither the moral character nor the personal position has a hand to play in mitigating the severity of sexual offence. By making the political designation of the offender to weigh heavily

¹³ State of Haryana v. Hasmat, (2004) 6 SCC 175 (India).

¹⁴ Kishori Lal v. Rupa, (2004) 7 SCC 638 (India).

¹⁵ State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57 (India).

on the suspension of sentence than the offence committed, the High is putting the injury to the victim second.

The High Court, by choosing to interpret Section 5(C) of POCSO ACT concerning the use of the term “Public Servant” as opposed to Section 5 (f) concerning the use of the term person in position of authority or position of trust, makes a distinction, which is legally weak, and has no connection to the harm caused to the victim. This jurisprudence, *State of Haryana vs Bajanlal*¹⁶ means that statutory definitions, namely, the ones aimed at dealing with abuse of power, should be understood in a liberal manner in order to promote the intent of the law. Whether the accused is declared to be a public servant or that of a person who exercises authority, the violation of trust and subsequently damages to the victim girl child is always the same. By limiting the analysis of the High Court to the technical interpretation, it left the rule of liberal interpretation of child protection legislation.

C. The doctrine of Substantive Survival:

This decision of the High Court to stay the sentence disregards the principle of substantive survival: once the building blocks and key facts of the offence have been determined beyond reasonable doubt, any final determination of guilt remains despite errors or obscurities. By staying the sentence on a labelling dispute, the Court inappropriately takes into consideration an objection concerning the degree of offence against an objection concerning the factum of offence. This would be an indication of judicial control since the convicted holds onto a life-term captive to the essence crime of rape regardless of whether he is a government official or otherwise. This technicality instead of substantive culpability is contrary to that of Supreme Court in *Lachman Das vs State of Punjab*(1970)¹⁷ which decisively stated that in case the requisites of the Offence in substance are satisfied then an erroneous reference in the particular penal law or categorical attribution. Further, the Apex Court in the case *Zahira Abidulla Sheikh vs State of Gujarat*¹⁸ highlighted the fact that the judicial system should give adjudicatory fact-finding on purely technical matters. In the present case, since the test of prima facie unsustainability to the suspension of sentence has not been established, the evidentiary value regarding the sexual assault is still present. The dispute on the official status of offender

¹⁶ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 (India).

¹⁷ *Lachhman Dass v. State of Punjab*, (1970) 2 SCC 63 (India).

¹⁸ *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2006) 3 SCC 374 (India).

does not offset the established criminal offense and therefore does not justify the freedom of the Appellant.

D. Mishandling of Authority and Potential risk to the safety of Victims:

The legislative purpose of Section 5 of POCSO ACT is to prevent the exploitation of trust, power and authority in contrast to the strict adherence to technical categories. As such, the technical issue of whether a Member of Legislative Assembly qualifies with the ambit of Public Servant is non-essential to the role of the legislature. Due to his status alone, the perpetrator enjoys disproportionate power, which enables him to have inappropriate psychological or coercive power on the victim and the criminal administrative system. The strict and formalistic approach to interpretation that is presupposed by the High Court in this case therefore points to the incompatibility of the strict and formalistic approach with the protective and victim-centric and wide-ranging mandate of statute. The fact that the freedom of the accused cannot be termed as a lone decisive factor in the context of adjudging the suspension of sentence cannot be disputed. The Unnao Case alone is a legally accepted example to elaborate how the undue political authority may undermine investigation, intimidate the witnesses and abuse the survivors¹⁹; the situation made the Supreme Court take the extraordinary measure of transferring out of the state. The refusal of the High Court of the validity of safety concerns as mere bare assumptions is in this light indicative of a disturbing lack of concern with ground realities in favor of technical formalism at the expense of substantive justice, a devaluation of the victim-focused ethos of POCSO ACT.

5. REMEDYING LEGAL FALLACY BY SUPREME COURT: PROTECTION OF SUBSTANTIVE JUSTICE.

On December 30 2025, when Chief Justice Surya Kant sat in conjunction with Justices AG Masih and J.K. Maheswari,²⁰ it stayed the order of suspension of sentence by the Delhi High Court. In granting the stay order, the Court was deeply troubled by the technical meaning of the High Court by asking why the Police Constable should be in the Category of Public

¹⁹T ejeswar Patnaik, *Criminalization of Politics in India — Undermining the Spirit of Democracy, Ass'n for Democratic Reforms* (May 10, 2025), <https://adrindia.org/index.php/content/criminalization-of-politics-in-india-undermining-spirit-of-democracy>.

²⁰ *Central Bureau of Investigation v. Kuldeep Singh Sengar*, SLP (Crl.) No. 21367/2025, order dated Dec. 29, 2025 (SC) (India).

Servant and the Member of Legislative Assembly exempted of aggravated charges.²¹ Solicitor General Tushar Mehta representing CBI argued in support of context-sensitive approach to law by referring to Section 42A of POCSO ACT where the statute has been given overriding force. He made a step forward to state that in order to protect the interest of the child, a "public servant" deserves to be defined due to the dominance over the victim. The Solicitor General claimed that Sengar had gross political influence that he managed to impose such control and that aggravated offence of penetrative sexual assault was not infringement of Article 20 of the Constitution. Substance over such submission was found by the Supreme Court in considering such substantial questions of law noting that the office of the elected representatives under POCSO ACT imposes the need to determine largely and in an authoritative manner. In addition, the CJI closely challenged the accusations of corruption of the High Court Judges by the public media whose sanction granted Sengar bail.²²

By cautioning the counsel on behalf of the victim against making any effort to browbeat the system, the Chief Justice was reminding the victim that the judiciary itself was assuming the burden of conviction in the case of Sengar. Although it agreed that the High Court could have an inadvertent mistake in not deciding whether Sengar should be convicted under IPC and pass bail order. The Bench once again said that such mistakes should be subject to appeals to the courts and not insulting comments or demonstrations. In the end, the Court allowed an opportunity to submit individual appeal to the victim and provided free legal assistance.²³

CONCLUSION:

The case of CBI vs Kuldeep Singh Sengar judicial procedures brings out an important contradiction of the technical statutory formalism with increased demands of substantive justice under the special law system. Delhi High Court suspension sentence, though based on the rigorous textual interpretation of the section 21 of IPC, inadvertently revealed the structural weakness, in that those in authority could use the legislative loophole(s) to circumvent the aggravated category of the POCSO act. In this case, the Paradox of a Public Servant has become

²¹ Ibid 3.

²² *Supreme Court Advises Against Allegations Against Delhi HC Judges In Unnao Rape Case; Kuldeep Sengar's Interim Bail Stayed*, LIVELAW (Dec. 29, 2025), <https://www.livelaw.in/top-stories/supreme-court-advises-against-allegations-delhi-hc-judges-unnao-rape-case-kuldeep-sengar-bail-stayed-516356>.

²³ *Supreme Court Advises Against Allegations Against Delhi HC Judges In Unnao Rape Case; Kuldeep Sengar's Interim Bail Stayed*, LIVELAW (Dec. 29, 2025), <https://www.livelaw.in/top-stories/supreme-court-advises-against-allegations-delhi-hc-judges-unnao-rape-case-kuldeep-sengar-bail-stayed-516356>.

the focal point of the legal discourse, where the Judiciary is now required to determine whether an individual has exceeded his/her bounds by superseding his/her role as a person or not.

Dominance must be characterized on the basis of administrative classifications or the reality of dominance that they exercise on the victims. The analysis of the Supreme Court on this rationale shows that the future of POCSO jurisprudence should lean towards a contextual interpretation and the law will remain a protection of the weak against a loophole by the strong. To summarize, the corrective action by the Supreme Court is a duo protection to the integrity of judiciary and the rights of a victim. The Supreme Court has achieved the victim-centric Jurisprudence by overturning a secondary participant to a primary litigant, a feat made possible by granting the stay on bail order and making the independent appeal of the victim possible. With the legal fraternity awaiting to know the final ruling on the status of elected representatives, this case forms as the reminder of the landmark that the errors of judiciary, either in interpretation or non-intentionally, should be corrected with the help of the established appellate system. The ultimate ruling of this case will set a precedent that will be undoubtedly groundbreaking, either determining as either true or false, that the judiciary is capable of rising above the borders of formal legality to arrive at the moral understanding of justice.