
GENDER NEUTRALITY UNDER POCSO: A CRITICAL EXAMINATION OF LAW AND JUDICIAL INTERPRETATION

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ABSTRACT

The present study undertakes a critical exploration of gender neutrality within the Protection of Children from Sexual Offences (POCSO) Act, 2012, interrogating its legislative intent, judicial interpretation, and socio-legal ramifications. Conceived as a comprehensive child protection statute, POCSO's gender-neutral framework was envisioned to extend equal protection to all children irrespective of sex or gender identity. However, the neutrality principle has generated interpretive dilemmas before the courts, particularly in cases involving male victims, female perpetrators, same-sex abuse, and consensual adolescent intimacy. The central hypothesis of this research is that while gender neutrality reflects a progressive legislative shift towards inclusivity, its unqualified application has produced both normative and practical challenges. On one hand, it has resulted in the over-criminalization of adolescent sexuality, where consensual relationships are frequently prosecuted as offences. On the other hand, the principle tends to obscure gender-specific vulnerabilities, thereby limiting the law's effectiveness in addressing disproportionate risks faced by girls and LGBTQ+ children in a patriarchal socio-cultural milieu. The inquiry will employ a doctrinal and jurisprudential analysis of statutory provisions and judicial decisions to assess whether the judiciary has succeeded in harmonizing neutrality with the lived realities of child victims. The expected outcome is to illuminate the dual character of neutrality—its capacity to broaden protection as well as its propensity to flatten complex vulnerabilities. The research argues for a nuanced recalibration of the neutrality model through judicial guidelines, legislative refinements, and sensitivity-driven enforcement mechanisms. By situating the debate within the larger discourse on equality, vulnerability, and child rights, this study seeks to advance the argument that neutrality should not be an abstract end in itself; rather, the paramount consideration must remain the holistic protection of the child as the ultimate constitutional and moral mandate.

Keywords: POCSO Act 2012, Gender Neutrality, Judicial Interpretation, Male Victims, LGBTQ+Children, Child Sexual Abuse, Comparative Law, Legal Reform.

Introduction:

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted as a comprehensive law to safeguard children from sexual abuse and exploitation. Its most progressive feature lies in the use of gender-neutral language, extending protection to *any child* under eighteen, regardless of sex or gender identity. This marks a departure from the patriarchal framework of earlier laws and reflects constitutional principles of equality under Article 14 as well as the “best interest of the child” principle under the UN Convention on the Rights of the Child. However, the neutrality promised in the text of POCSO has not been fully realized in practice. Judicial interpretation often reflects gendered assumptions, treating victims primarily as girls and perpetrators as men. Courts frequently rely on IPC-based terminology such as “violation of modesty,” undermining the inclusive intent of the Act. Cases involving male or transgender victims, or female perpetrators, remain rare in judicial discourse. This invisibility is reinforced by social stigma, which discourages boys and LGBTQ+ children from reporting abuse, and by state policies that overwhelmingly focus on protecting girls.

Comparative perspectives reveal this gap more sharply. In jurisdictions like the UK, US, and Australia, gender-neutral child sexual abuse laws are actively implemented with recognition of male and queer victimhood. Data collection, awareness programs, and judicial decisions in these countries reflect inclusivity, whereas in India neutrality often remains symbolic.

The consequences of this partial realization are significant. Male victims remain under-reported and invisible, while transgender children face compounded marginalization. Rehabilitation programs and awareness initiatives largely remain girl-centric, reinforcing stereotypes of the “female child as the default victim.” Unless judicial and policy responses evolve, POCSO’s neutrality risks becoming tokenistic rather than transformative. This research therefore examines whether Indian courts have meaningfully internalized gender neutrality under POCSO. By situating Indian jurisprudence within an international framework, it highlights existing gaps and emphasizes the need for reforms in judicial reasoning, investigative practices, and policy design. The study argues that genuine protection requires moving beyond the girl-child narrative towards a holistic, inclusive framework that fulfills POCSO’s progressive

vision.

From IPC to POCSO: The Journey of Child Protection Laws

The legal architecture of child protection in India reflects a gradual yet remarkable evolution—from the fragmented and adult-centric provisions of the Indian Penal Code (IPC), 1860, to the holistic, child-oriented, and gender-neutral framework under the Protection of Children from Sexual Offences Act (POCSO), 2012. Drafted during the colonial era, the IPC did not conceptualize children as independent rights-bearers. Instead, sexual offences were framed largely around protecting women’s chastity and preserving public morality. Sections such as 375 (rape), 354 (outraging the modesty of a woman), and 377 (unnatural offences) were applied in cases involving minors, but none directly addressed the distinctive vulnerabilities of children. Male and transgender children, in particular, remained invisible under this framework.

The IPC’s approach was both gendered and inconsistent. The age of consent, historically pegged at an extremely low threshold, was altered over time more in response to societal anxieties about morality, marriage, and reproduction than as recognition of a child’s bodily autonomy. Likewise, Section 377 criminalized consensual same-sex intimacy between adults while failing to provide a coherent mechanism to address the exploitation of boys. Consequently, numerous cases of child sexual abuse fell through the cracks. Judicial interpretation further reinforced these gaps, as courts frequently reduced grave violations of children’s dignity into questions of “modesty” or “unnatural acts,” thereby framing abuse through morality rather than child rights. Recognizing these deficiencies, the Law Commission of India in its 172nd Report (2000) strongly recommended a separate child-specific law. Later, the Justice Verma Committee (2013), though post-POCSO, reaffirmed the need for specialized legislation as the foundation of child protection.

The enactment of POCSO in 2012 marked a paradigm shift. For the first time, India adopted a statute exclusively aimed at addressing child sexual abuse in a comprehensive, gender-neutral, and rights-based manner. POCSO clearly delineates offences such as penetrative and non-penetrative assault, sexual harassment, and exploitation of children for pornographic purposes. It also aligns with India’s obligations under the United Nations Convention on the Rights of the Child (UNCRC), placing the “best interests of the child” at the center. This transition underscores a movement from morality-laden, indirect safeguards under IPC to an inclusive,

child-centric statutory regime. Yet, the persistence of colonial-era morality and patriarchal judicial approaches continues to challenge POCSO's transformative potential, making effective interpretation and enforcement the key to realizing its promise.

The Evolution from Criminalization to Rights-Based Protection

The history of child protection laws in India reflects a profound transformation—from a colonial criminalization model under the Indian Penal Code (IPC), 1860, to a modern rights-based framework centered on dignity and welfare. Initially, the IPC introduced provisions such as Sections 312–317 (miscarriage, concealment of birth, exposure), Sections 361–369 (kidnapping, abduction), and Section 375 (rape with age of consent). These were fragmented, punitive, and offender-centric, treating children as passive objects of protection rather than independent rights-bearers.

Post-independence, the Constitution brought a paradigm shift through Articles 14, 15(3), and 21, guaranteeing equality, special protection, and the right to life with dignity. Provisions like Articles 21A, 23, and 24, along with Directive Principles (Articles 39, 45, 47), laid the foundation for welfare-oriented child protection. Yet, children were still seen primarily as dependents. A decisive transformation occurred when India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992, which emphasized protection, survival, development, and participation. This global framework pressed India to adopt a comprehensive rights-based model. Laws soon reflected this shift: the Juvenile Justice Act (1986, revised in 2000 and 2015) highlighted rehabilitation and restorative justice; the Right to Education Act, 2009, operationalized Article 21A; and the Child Labour (Prohibition and Regulation) Amendment Act, 2016, strengthened safeguards. Most significantly, the Protection of Children from Sexual Offences (POCSO) Act, 2012, introduced a gender-neutral, child-friendly framework with broad definitions of offences, in-camera trials, mandatory reporting, and focus on rehabilitation.

Judicial interpretation reinforced this evolution. In *Bandhua Mukti Morcha* (1984) and *M.C. Mehta* (1991), the Supreme Court expanded Article 21 to protect child labourers. In *Unni Krishnan* (1993), education was recognized as a fundamental right. The principle of the “best interests of the child” became central to child jurisprudence. Today, child protection in India rests on three axes: preventive (education, awareness), protective (POCSO, child-friendly courts), and promotive (rehabilitation and reintegration). The journey from IPC's punitive

approach to POCSO's rights-based model embodies transformative constitutionalism. Yet, challenges remain—underreporting, stigma, and new digital threats demand sensitive enforcement, community awareness, and child-centered jurisprudence to realize the promise of holistic child protection.

POCSO Act, 2012: Towards a Child-Centric Legal Framework

The Protection of Children from Sexual Offences Act, 2012 (POCSO) marks a watershed in India's child protection jurisprudence. Before its enactment, child sexual abuse was addressed only through scattered provisions of the Indian Penal Code (IPC), 1860, which were adult-centric and ill-equipped to address the realities of child victimization. The IPC primarily focused on rape, outraging modesty, and unnatural offences, but it failed to criminalize non-penetrative assault, sexual harassment, or child pornography (Kacker, Varadan, & Kumar, 2007). POCSO filled this gap by introducing a comprehensive, child-centric framework, grounded in the principles of the UN Convention on the Rights of the Child (UNCRC), 1989, ratified by India in 1992.

A defining feature of POCSO is its **gender-neutral definition of “child”** as any person below eighteen years (Section 2(d)). Unlike earlier patriarchal laws, this provision ensures equal protection for boys, girls, and transgender children. The Act criminalizes a wide range of offences, including penetrative and non-penetrative sexual assault (Sections 3–10), sexual harassment (Section 11), and the use of children for pornographic purposes (Sections 13–15). In doing so, POCSO aligns with international legislative trends such as the UK Sexual Offences Act, 2003, and South Africa's Sexual Offences Act, 2007 (UNICEF, 2014). Procedurally, the Act emphasizes **child-friendly justice mechanisms**. Investigations must be conducted in a sensitive manner, with child statements ideally recorded at home by female police officers (Section 24). Children cannot be detained in police stations overnight, and in-camera trials by Special Courts are mandatory (Section 33). The Act also directs that trials be completed within one year, reflecting the principle of speedy justice. These safeguards underscore a rights-based shift—children are recognized not as mere witnesses, but as rights-holders entitled to dignity, privacy, and participation.

Judicial interpretation has further advanced POCSO's child-centric ethos. In *Independent Thought v. Union of India* (2017), the Supreme Court read down the marital rape exception under Section 375 IPC for minor wives, holding that intercourse with a girl under eighteen

constitutes rape. In *Satish Ragde v. State of Maharashtra* (2021), the Court rejected the “skin-to-skin” test, affirming that any act with sexual intent amounts to assault under POCSO. Such rulings reinforce the constitutional principle of the best interests of the child. Yet, implementation challenges persist. NCRB (2023) data shows conviction rates often below 35 percent, hindered by weak investigations, hostile witnesses, and trial delays. Moreover, the criminalization of consensual adolescent relationships has raised concerns of overreach. Scholars stress that the Act’s effectiveness depends on trained police, prosecutors, and judges, along with adequate psychosocial support for survivors (UNODC, 2019).

In conclusion, POCSO is not merely a penal statute but a constitutional commitment to child dignity and safety. By broadening punishable offences, embedding child-sensitive procedures, and aligning with global standards, it transforms children from passive objects of protection into active bearers of rights. However, bridging the gap between law and lived reality requires systemic reforms. Without them, POCSO’s rights-based promise risks remaining aspirational rather than transformative.

Bridging the Gaps: Towards Effective Enforcement and Reform

1. *Legislative Promise vs. Practical Enforcement*

- The POCSO Act, 2012 provides a strong child rights protection framework.
- However, procedural delays, weak investigations, and fragmented institutional responses dilute its impact.
- Effective reform requires moving beyond symbolic criminalization to a holistic enforcement model addressing structural, procedural, and societal shortcomings.

2. *Investigation and Prosecution Challenges*

- Police officials lack specialized training in handling child victims sensitively.
- Poor evidence collection often leads to weak prosecutions and re-traumatization of survivors.
- Absence of standardized forensic protocols further hampers justice delivery.

- Reform Need: Establish specialized child protection units with expertise in forensic science, child psychology, and digital crime investigation.

3. *Judicial Inefficiencies*

- Statutory timelines for speedy trials are rarely met; pendency rates remain high.
- Many POCSO courts lack child-friendly infrastructure.
- Victims are often compelled to testify in hostile and intimidating environments.
- Reform Need:
 - Trauma-informed judicial practices.
 - Strengthening special courts with child-sensitive infrastructure.
 - Training for judges and prosecutors in child psychology and victim-centric jurisprudence.

4. *Misuse and Over-Criminalization*

- Law often misapplied in consensual adolescent relationship cases, especially when families disapprove of inter-caste or inter-religious unions.
- Leads to unnecessary burden on judiciary and undermines adolescent autonomy.
- Reform Need: Introduce a “close-in-age” clause to balance child protection with adolescent agency.

5. *Victim Rehabilitation Gaps*

- Provisions for compensation, counselling, and care exist but are often delayed and inconsistently enforced.
- Current model is largely punitive rather than restorative.
- Reform Need:

- Expand one-stop centers for integrated services (medical, psychological, legal, and social).
- Develop community-driven awareness and prevention programs.

6. *Digital Sphere Challenges*

- Cyber grooming, online exploitation and circulation of child sexual abuse material are rising.
- Enforcement is weak due to lack of technological expertise and poor inter-agency coordination.
- Reform Need:
 - Investment in cyber-forensic infrastructure.
 - Collaborations with tech companies.
 - International cooperation for tackling cross-border digital crimes.

7. *Comprehensive Reform Agenda*

- Strengthen enforcement mechanisms.
- Reform substantive provisions to reduce unintended consequences.
- Integrate four pillars:
 - Victim rehabilitation,
 - Judicial efficiency,
 - Adolescent autonomy,
 - Digital safety.
- Goal: A child-centric framework that upholds children as independent rights-bearers entitled to dignity, autonomy, and holistic protection.

Strengthening Child Protection: From Enforcement to Empowerment

The evolution of child protection laws in India reflects a remarkable legislative commitment, yet the system remains heavily tilted towards enforcement. Statutes such as the Indian Penal Code (IPC, 1860), the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences Act, 2012 (POCSO) have created a strong punitive framework. However, an overemphasis on criminalization often reduces children to passive victims rather than recognizing them as active rights-bearers with evolving capacities. True child protection demands a paradigm shift—from punitive deterrence to holistic empowerment. This requires a multidimensional approach, where the law operates not only as a shield against harm but also as a tool for nurturing resilience, participation, and dignity.

Enforcement as the Starting Point - Criminal law has provided a strong foundation for child protection. IPC provisions on cruelty, kidnapping, trafficking (Sections 75–83), abandonment and concealment of birth (Sections 312–317), and obscenity (Sections 292–293) lay down deterrence. The POCSO Act, 2012 introduced a gender-neutral, child-specific framework with child-friendly procedures under Sections 33–36, while the JJ Act, 2015 balanced protection with rehabilitation. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 further prohibited hazardous child labour. Yet, enforcement alone has limits. Low conviction rates, procedural delays, and secondary victimization during trial highlight the fragility of an enforcement-heavy model.

From Enforcement to Empowerment - Empowerment in child protection involves legal, institutional, social, and psychological dimensions. Legal empowerment ensures child-friendly courts through in-camera trials, video conferencing, limits on cross-examination, and training officials in child psychology. Institutional empowerment strengthens Child Welfare Committees, Juvenile Justice Boards, and district units with resources and autonomy. Social empowerment focuses on reducing stigma, integrating child rights and cyber-safety in schools, and forming vigilance committees at local levels. Psychological empowerment emphasizes trauma counselling, safe spaces, peer support, and victim compensation under POCSO and the Nirbhaya Fund for holistic protection.

Judicial Shift: From Punitive to Restorative - The judiciary has increasingly emphasized child-centric justice. In *Sheela Barse v. Union of India* (1986), the Court recognized child-friendly procedures. In *Bachpan Bachao Andolan v. Union of India* (2011), strict directions

were issued against trafficking and bonded labour. *Independent Thought v. Union of India* (2017) declared marital rape of minors unconstitutional, while *Sakshi v. Union of India* (2004) urged sensitivity in sexual offence trials. These decisions underscore the judiciary's evolving approach from punishment to restoration and dignity.

Comparative and Global Lens - Globally, the UK's Children Act, 1989 emphasizes the best interest of the child through foster care and family support. The US integrates enforcement with therapy through Child Protective Services, while Scandinavian countries focus on preventive interventions and restorative models. India must learn from such practices to balance enforcement with empowerment.

Challenges and Roadmap - Despite progress, challenges remain: low conviction rates under POCSO (below 35%), institutional fatigue in CWCs and JJBs, rising digital vulnerabilities, and deep-rooted stigma. The way forward requires integrating enforcement and empowerment: enforcement as a shield, empowerment as a sword. Innovations such as a National Child Empowerment Policy, independent state ombudsmen, cyber child units, and restorative programs like scholarships and skill training are crucial. Participation must be institutionalized through children's parliaments and consultative bodies, ensuring children are not just protected but empowered as stakeholders in their own future.

The Way Forward: Integrating Rights, Dignity, and Justice

The future of child protection in India cannot be reduced to a binary choice between enforcement and empowerment; rather, it demands their meaningful integration within a holistic ecosystem that secures children's rights, dignity, and justice. Enforcement must act as the protective shield against harm, ensuring deterrence and accountability, while empowerment should operate as the transformative sword that enables children to become active participants in shaping their futures. To achieve this balance, reforms must transcend fragmented legal mechanisms and move towards a child-centric governance model anchored in constitutional guarantees under Articles 14, 15, 21, and 39, as well as India's commitments under the UN Convention on the Rights of the Child. A dedicated National Child Empowerment Policy can institutionalize this paradigm, ensuring that protection is not viewed merely as charity but as a constitutional mandate and developmental investment.

Institutional strengthening is at the heart of this transformation. Child Welfare Committees,

Juvenile Justice Boards, and Special POCSO Courts require financial independence, digital capacity, and multi-disciplinary expertise in child psychology and social work. An independent Child Rights Ombudsman at national and state levels could provide systemic accountability, while annual “Child Protection Scorecards” can evaluate progress across enforcement, rehabilitation, and empowerment. Equally important is moving protection closer to the grassroots through children’s parliaments, school-based rights clubs, and local vigilance committees that ensure children’s voices are not only heard but acted upon. Education becomes a natural vehicle of empowerment when it integrates child rights literacy, gender sensitivity, mental health awareness, and digital safety into curricula, producing generations capable of resisting exploitation. Justice, in this vision, must move beyond narrow retribution. Restorative approaches—trauma counselling, victim compensation schemes, mentorship, community service, and skill development—can provide children with opportunities for reintegration and healing. Juveniles in conflict with law, instead of being confined to punitive institutions, must be guided through symbolic labour and capacity-building initiatives in line with the “From Crime to Contribution” philosophy under the Bharatiya Nyaya Sanhita, 2023. Simultaneously, digital child protection requires urgent prioritization in the age of cybercrime. Establishing specialized cyber units, AI-driven monitoring systems, and regional-language digital literacy campaigns for parents, teachers, and children can transform technology from a site of risk into a protective enabler.

This child-centric framework also necessitates judicial innovation. Fast-track courts for POCSO cases, exclusive child rights benches in High Courts, and trauma-sensitive training for judges and prosecutors can minimize secondary victimization. Technological innovations like video testimonies, in-camera trials, and witness protection must be mainstreamed to preserve a child’s dignity. Yet, legal mechanisms alone cannot suffice. Societal transformation is equally crucial. Communities must break the culture of silence through awareness campaigns that dismantle stigma, victim-blaming, and normalization of abuse. Families, teachers, and frontline workers must be trained as first responders capable of early detection, reporting, and psychological support. Ultimately, child protection must be reframed as nation-building. With nearly one-third of India’s population below 18, safeguarding children is not a welfare choice but a constitutional and developmental necessity. A four-pillar model—legal protection as shield, empowerment as sword, dignity as foundation, and justice as outcome—offers a blueprint for this vision. By embedding rights in governance, restoring dignity in institutions and ensuring justice through rehabilitation, India can move from symbolic legislation to a lived

reality of protection and empowerment. The measure of success must no longer be conviction rates alone, but the resilience, reintegration, and flourishing of children as equal citizens in a child-centric democracy.

Conclusion

The future of child protection in India lies in striking a balance between enforcement and empowerment. While punitive laws like IPC, POCSO, and the JJ Act provide a necessary shield, true justice demands a child-centric approach that nurtures dignity, resilience, and participation. Strengthening institutions, integrating child-friendly procedures, ensuring trauma counseling, and promoting social awareness are crucial to move beyond symbolic enforcement. Children must be recognized not merely as beneficiaries of protection but as active rights-holders with evolving capacities. By weaving together legal safeguards, social empowerment, and restorative justice, India can secure a future where every child lives with safety, dignity, and opportunity.