

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2026 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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Veiled Justice: Privacy vs Protection in POCSO Act 2012's Shadow

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Received 24 March 2026; Accepted 24 April 2026; Published 28 April 2026

Children are the future of a country. Their welfare and goodwill will ensure a healthy future for a country. Before 2012, we had no uniform legal framework for the protection of children. The Indian government has taken a strategic move to ensure a robust protective framework for the protection of children by implementing the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012). Rapid digitalisation introduced new dimensions of crimes against children. The POCSO Act, 2012, maintains accountability in cyberspace as well and establishes an effective infrastructure for rooting out challenges related to the rights of children and offences against children. This act maintains the confidentiality and privacy of the cases related to children. There is stricter law and legislation, but a lack of an effective surveillance system. In this age of modernisation, artificial intelligence plays a crucial role across industries and can be used as a tool for maintaining robust surveillance systems. There is a lack of awareness in society regarding children's rights. We have many misconceptions related to child discrimination, which creates a gap between the identification of illegal and unnatural activities against children. In this article, we are deeply analysing the working mechanism of the POCSO Act, 2012, and identifying flaws in the regulation of children's rights and protection.

Keywords: *children, uniform legal framework, offences against children, confidentiality.*

INTRODUCTION

What do you think about marriage? Do you think that it's only a lifelong relationship of couples and a subject of indulgence and luxury? It is more than these things. It is a way to achieve four life aims: Dharma (duty), Artha (wealth), Kama (pleasure), & Moksha (liberation). In Hindu marriage, three duties are imposed upon the couple: i) Dharma, ii) Praja, iii) Rati.

In this second duty, Praja means childbearing. In Hinduism, it is believed that this duty frees a person from ancestral debt (Pitri Rin). Not only Hinduism, but also all other religions of the world recognise procreation/childbearing as a religious duty. India is a diverse country with a confluence of many religions. Indian societies are influenced by the concept of religion, and they have been structured and built on the foundation of these religious beliefs.

As we know, children are the future and strength of any country. They ensure the continuous existence of countries. Every person belongs to a family. Every society is family-oriented. Children are the centre of the family and a basic need for a happy family. Everyone has grown up into an adult after passing a precious childhood. Everyone has sweet memories of their childhood, but not everyone has the same memories. Someone faced something creepy in their childhood, but they couldn't communicate it to their parents. Someone communicated this, but their parents took it lightly because they were heavily tied to social relationships. Parents do not want to compromise with their self-respect and are scared of society.

Therefore, here we will discuss those provisions of the POCSO Act, 2012, which provide a hard shield of privacy and confidentiality to the children and protect them from unnatural activities, and examine the Constitution's articles and how they react for the welfare of children.

WHO AMONG US IS A CHILD?

The Convention on the Rights of the Child (CRC) defined 'child' as 'all human beings under the age of 18 years, unless any other age of majority is recognised by a relevant national law.'

According to sec. 2(d), 'child' means any person below the age of eighteen years, irrespective of their gender.¹

¹ Protection of Children from Sexual Offences Act 2012, s 2(d)

HOW THE INDIAN CONSTITUTION OPERATES WITH RIGHTS?

The Constitution operates as the fundamental law of the land.² Government organs owe their origin to the Constitution and derive their authority from and discharge their responsibilities within the framework of the Constitution. The Union Parliament and the State Legislature are not sovereign. The validity of a law, whether Union or State, is judged with reference to its respective jurisdiction as defined under the Constitution of India. The judiciary has the power to declare any norm as unconstitutional if the law is found to contravene any provision of the Constitution; then, we can consider the Indian Constitution as a 'Gerund Norm'.³

Our Constitution provides Chapter III, which, ranging from Art. 12 to 35, deals with six fundamental rights, which are justifiable in nature. Chapter IV of the Constitution deals with Art. 36 to 51, which provide DPSP; it is of a non-justifiable nature. Fundamental rights set boundaries for drafting laws in India. On the other hand, the directive principles of state policy directed the states to make efforts for the evolution and establishment of a welfare state. Both these chapters are the base of the entire constitution.

ROLE OF THE INDIAN CONSTITUTION IN THE WELFARE OF CHILDREN

According to Pixie Yangailo, Chairperson of Zambia Human Rights Commission, "children are the most vulnerable group in society due to the physical, emotional and psychological immaturity and subsequent dependence upon adults".⁴

A revolutionary chapter on the child's rights was effective when the Indian Constitution was introduced after independence. Before its enactment, there were snippets and snatches of different legislations that addressed child rights. The Constitution of India was the first document that recognised the rights of children and referred to them in several articles about their literacy, livelihood, development of childhood, non-discrimination in the educational

² R K Chaubey, *Federalism, Autonomy and Centre-State Relations* (Satyam Books 2007)

³ Kalsen Hans and Anders Wedberg, *GENERAL THEORY OF LAW AND STATE* (Lawbook Exchange Ltd 2011)

⁴ Dr Sukhwinder Singh, 'Child Rights in Indian Constitution: An Analysis' (2025) 13(7) *Quest Journals: Journal of Research in Humanities and Social Science* <<https://www.questjournals.org/jrhss/papers/vol13-issue7/1307180184.pdf>> accessed 20 March 2026

fields, compulsory and free education, and the ban on their participation in work in factories, mines, and any risky jobs.⁵ The following are some child welfare-oriented articles:

Right to Equality [Art. 14]: In the matter of Gaurav Jain versus the Union of India,⁶ the highest court of India ruled that segregating prostitutes' children from other children would be damaging to their well-being. It asserted that children of prostitute ladies have a similar right to equal opportunities and to be treated with respect, diligence, and safety. They should be able to enjoy regular social lives without being disregarded.⁷

1. Rights Against Discrimination [Art. 15]
2. Right to Freedom of Expression [Art. 19(1)(a)]
3. The Right to Individual Liberty and the Due Process of Laws [Art. 21]

Right to Education [Art. 21-A]: Right to free education to every child, who is between the ages of 6 and 14 years.

Dr B.R. Ambedkar, who was a prominent jurist, also said that, "Education is the milk of a lioness; whoever drinks it will roar."

Elimination of Trafficking in Persons and Forced Workers [Art. 23]: In the matter of Vishal Jeet versus Union of India,⁸ the Supreme Court made many orders to put an end to child sexual exploitation. It directed the establishment of rehabilitation institutions for sexually exploited youngsters, street beggars, and minor females forced into prostitution.

In the matter of Bandhua Mukti Morcha versus Union of India,⁹ the highest court of India decided that if the state does not take steps under the Bonded Labour Systems Act of 1976, it will violate the provisions of Article 23 within the Indian Constitution.

1. Right To Be Protected in Opposition to Extremely Hazardous Occupation [Art. 24]
2. Right To Be Shielded Against Harassment [Art. 39(e)]

⁵ Granville Austin, *The INDIAN CONSTITUTION: Cornerstone of a Nation* (2nd edn, Oxford University Press 1999); Gopal Bhargava, *Child Labour* (Kalpaz Publication 2003)

⁶ *Gaurav Jain v Union of India & Ors* (1997) 8 SCC 114

⁷ Rishabh Krishan, 'RIGHTS OF CHILDREN UNDER THE INDIAN CONSTITUTION' (*Jus Corpus*, 30 May 2024) <<https://www.juscorpus.com/rights-of-children-under-the-indian-constitution/#page>> accessed 20 March 2026

⁸ *Vishal Jeet v Union of India and Ors* (1990) AIR 1412

⁹ *Bandhua Mukti Morcha v Union of India & Ors* (1984) AIR 802

3. Right For Equal Opportunity and Resources [Art. 39(f)]
4. Children Have a Right to Receive Early Childhood Education and Care [Art. 45]

BACKGROUND OF THE POCSO ACT 2012

After independence, India had no central law for protecting children from sexual offences. Gradually, we realised that children require extra attention and security due to their vulnerability and immaturity. Children are small and vulnerable, making them easily manipulated and overlooked. After considering these challenges, we have taken a step towards implementing a centralised law for the whole Indian territory, which protects every child from sexual offences and creates a robust and gender-neutral legal framework. Then, we introduced the Protection of Children from Sexual Offences Act, 2012, which was also amended in 2019, making it stricter. The law's main aim is to ensure the security of children from any kind of sexual abuse. This came into existence following India's ratification of the UN Convention on the Rights of the Child (1992) to address gaps in existing, fragmented laws and provide specialised, child-friendly legal procedures.

PROVISIONS UNDER THE POCSO ACT, 2012, FOR PRIVACY OF CHILDREN ENSURE END-TO-END ENCRYPTION OF CASES

The POCSO Act, 2012, primarily ensures the privacy of children and confidentiality of the case. Several sections of the POCSO Act show its dedication to ensuring the privacy of children. This act is very sensitive and significant in detecting the mental condition of a child victim. This act is designed with a very visionary approach, which ensures the future security of a child victim and provides assistance to him to recover from emotional setbacks and past life trauma. Several provisions related to the privacy of children are incorporated here.

Sec. 23-Procedure for Media: No person shall make any report or present comments on any child from any form of media, studio, or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.¹⁰ No reports in any media shall disclose the identity of a child, including his name,

¹⁰ Protection of Children from Sexual Offences Act 2012, s 23(1)

address, photograph, family details, school, neighbourhood, or any other particulars that may lead to disclosure of the identity of the child.¹¹

Sec. 37: The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.¹²

Sec. 24(5): The police officer shall ensure that the identity of the child is protected from the public media.¹³

If anyone does not comply with these provisions, then they are subject to appropriate punishment according to the Act.

TO BUILD A PROTECTIVE SHIELD FOR CHILDREN

Many provisions in this act help in building a protective shield for children against any kind of sexual abuse. These provisions impose a duty on authorities like news channels, police, doctors, and teachers to ensure the protection of children.

Provisions that help in the avoidance of any crime under this act –

Sec. 15: Punishment for storage of pornographic material involving a child.

Sec. 18: Punishment for attempt to commit an offence punishable under this act.

Sec. 19(1): Any person (including the child) who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed shall provide such information to the appropriate authority.¹⁴ It imposes a legal duty upon teachers and doctors, as well as the neighbourhood, to report any kind of case that falls under this section.¹⁵

Sec. 20: Obligation of media, studio & photographic facilities to report cases.

¹¹ Protection of Children from Sexual Offences Act 2012

¹² Protection of Children from Sexual Offences Act 2012, s 37

¹³ Protection of Children from Sexual Offences Act 2012, s 24(5)

¹⁴ Protection of Children from Sexual Offences Act 2012, s 19(1)

¹⁵ 'Ministry of Women and Child Development has put in place comprehensive legal and institutional framework to address child sexual abuse' (*PIB*, 13 February 2026)

<<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227447®=3&lang=2>> accessed 20 March 2026

Precautions in dealing with Child Victims –

Sec. 24: Recording of statement of a child shall not be in uniform.¹⁶ The statement of the child shall be recorded at the residence of the child. No child shall be detained in a police station at night for any reason.

Sec. 27: Medical examination of child

Sec. 36: Child not to see the accused at the time of testifying

This act incorporates provisions that make it easy to deal with the offences and cases under the act in a very balanced manner, and helps to make fruitful coordination with children in collecting data related to the case.

CRITICAL ANALYSIS

Only a stricter law is not sufficient to fix an issue due to the lack of proactive and functional machinery. In India, we are unable to intercept these kinds of cases easily. Until we identify a case, till then many of the children have been exploited and harassed.

CONCLUSION

After analysing the entire writing, we can conclude that we should take measures to raise awareness in society by using social media platforms and television advertisements and prepare a well-established educational curriculum that makes children aware of their rights and familiarises them with good touch and bad touch. We should utilise technologies to ensure effective surveillance. We should try to explain to everyone that boys can be subject to harassment, not only girls, and if anyone assumes that something wrong is happening, they should communicate with the appropriate authority without any hesitation. “We the Women of India v Union of India & Ors. Writ Petition(s) (Civil) No(s) 1156/2021 and in Writ Petition No. 427 of 2022 titled Bachpan Bachao Andolan v Union of India” has passed an order dated 09.10.2023 wherein the Hon’ble Court has directed the National Commission for Protection of Child Rights to formulate Model Guidelines with respect to Support Persons under Section 39 of the POCSO Act, 2012, in consultation with the State Governments and Government of the Union

¹⁶ Protection of Children from Sexual Offences Act 2012, s 24

Territories.¹⁷ In case of conflict between privacy and protection, then this act takes a very wise step in the resolution of that conflict; the proviso of Section 23 of the POCSO Act states that “reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.”¹⁸ A famous Sanskrit quotation is “Sanghe Shakti,” which means that power vests in unity. Therefore, we should be united to root out such crimes, provide a happy childhood for every child, and protect and preserve the future of the country.

¹⁷ *MODEL GUIDELINES WITH RESPECT TO SUPPORT PERSONS UNDER SECTION 39 OF POCSO ACT* (National Commission for Protection of Child Rights, 2024)

¹⁸ Protection of Children from Sexual Offences Act 2012, s 23(2)