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## CRITICAL ANALYSIS OF JUVENILE JUSTICE VIZ-E-VIZ PROTECTION OF CHILDREN AGAINST OFFENCES WITH SPECIAL EMPHASIS ON SEXUAL OFFENCES.

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### Introduction

In India, children are recognized as both victims and offenders under the legal system. The legal framework for the protection of children in India is mainly governed by the Constitution of India<sup>1</sup>, the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>2</sup>, and the Protection of Children from Sexual Offences (POCSO) Act, 2012<sup>3</sup>.

As victims, children in India are protected by various laws and policies aimed at ensuring their safety and well-being. The Constitution of India guarantees fundamental rights to all citizens, including children, and provides for the protection of their rights. The Juvenile Justice (Care and Protection of Children) Act, 2015, is a comprehensive legislation that provides for the care, protection, and rehabilitation of children in need of care and protection, and also deals with juvenile offenders. The Act establishes a separate juvenile justice system for children in conflict with the law and includes provisions for their rehabilitation and reintegration into society.

The POCSO Act, 2012, provides for the protection of children from sexual offences and ensures speedy justice for such offences. It defines a child as any person below the age of 18 years and includes various offences such as sexual harassment, sexual assault, and pornography involving children. The Act also provides for the establishment of special courts to handle cases of sexual offences against children, as well as the appointment of special public prosecutors to handle these cases.

<sup>1</sup> The Constitution of India

<sup>2</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>3</sup> Protection of Children from Sexual Offences (POCSO) Act, 2012

As offenders, children in India are also governed by the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act defines a juvenile as any person who has not completed 18 years of age, and provides for a separate juvenile justice system for dealing with offences committed by juveniles. The Act includes provisions for diversion, rehabilitation, and reintegration of juvenile offenders, and also establishes special juvenile justice boards and child welfare committees to handle cases involving juveniles.

Despite the legal framework in place, children in India continue to face numerous challenges as victims and offenders. There are various socio-economic factors that contribute to the vulnerability of children in India, such as poverty, illiteracy, and lack of access to healthcare and education. Additionally, there are often gaps in the implementation of laws and policies aimed at protecting children, leading to a lack of adequate protection and support.

This paper aims at analyzing the legal framework to deal with children as offenders and victims keeping in mind the special provisions formulated like the reverse burden of proof. It analyses the impact of these special provisions on the rights of others.

### **Legal framework to aid protection of children in india**

India has taken various legal steps to protect children as victims of various crimes. The legal framework for the protection of children in India includes the Constitution of India, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. The following are some of the legal steps taken by India for the protection of children as victims:

1. Protection under the Constitution of India: The Constitution of India provides for the protection of children under various provisions. The fundamental rights guaranteed under the Constitution, such as the right to life, liberty, and equality, apply to children as well. The Constitution also provides for the protection of children's rights to education, health, and protection from exploitation.<sup>4</sup>
2. Juvenile Justice (Care and Protection of Children) Act, 2015<sup>5</sup>: The Juvenile Justice Act, 2015 provides for the care, protection, and rehabilitation of children in need of care and protection, and also deals with juvenile offenders. The Act establishes a separate juvenile justice system for children in conflict with the law and includes provisions for their rehabilitation and reintegration into society.
3. Protection of Children from Sexual Offences (POCSO) Act, 2012<sup>6</sup>: The POCSO Act, 2012 provides for the protection of children from sexual offences and ensures speedy justice for such offences. It defines a child as any person below the age of 18 years and includes various offences such as sexual harassment, sexual assault, and pornography involving children.
4. Child-friendly procedures: The legal system in India has developed child-friendly procedures to protect children as victims. The POCSO Act provides for the appointment of a protection officer to ensure the

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<sup>4</sup> Supra 1

<sup>5</sup> Supra 2

<sup>6</sup> Supra 3

safety and well-being of the child, as well as the establishment of a child welfare committee to oversee the rehabilitation and reintegration of the child into society. The Act also provides for the use of special rooms for recording the statements of child victims in a manner that is comfortable and convenient for them.

5. Awareness campaigns: The government of India has launched various awareness campaigns to educate children and their parents about their rights and the legal provisions for their protection. These campaigns aim to empower children and their families to report any incidents of abuse and seek legal remedies<sup>7</sup>.

This article mainly focuses on the discourse regarding the effects that POCSO has on the protection of the children Viz-e-Viz the rights of the accused.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a comprehensive legislation that provides for the protection of children from sexual offences and ensures speedy justice for such offences. The Act was enacted by the Parliament of India with the intent of creating a legal framework to protect children from sexual abuse and exploitation, and to provide a mechanism for their rehabilitation and reintegration.

The legislative intent behind the POCSO Act, 2012 is to provide a strong legal framework to protect children from sexual offences, including sexual assault, sexual harassment, and pornography involving children. The Act recognizes the vulnerability of children and the need for their protection, and provides for a child-friendly system for handling cases of sexual offences against children. The Act defines a child as any person below the age of 18 years, and includes various offences such as sexual harassment, sexual assault, and pornography involving children.<sup>8</sup>

The Act also provides for the establishment of special courts to handle cases of sexual offences against children, as well as the appointment of special public prosecutors to handle these cases. The Act recognizes the need for speedy justice in cases of sexual offences against children, and provides for the completion of trials within a period of one year.

The POCSO Act, 2012 also includes provisions for the rehabilitation and reintegration of child victims of sexual offences. The Act provides for the appointment of a protection officer to ensure the safety and well-being of the child, as well as the establishment of a child welfare committee to oversee the rehabilitation and reintegration of the child into society

The legislative intent behind the POCSO Act, 2012 is to provide a comprehensive legal framework for the protection of children from sexual offences, and to ensure their safety, well-being, and rehabilitation. The Act recognizes the vulnerability of children and the need for their protection, and aims to provide a child-friendly system for handling cases of sexual offences against children.

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<sup>7</sup> POCSO Act: The Legal Framework for Child Protection in India" by R. K. Sharma and Swati Shrivastava, Indian Pediatrics, 2018: <https://www.indianpediatrics.net/june2018/june-541-550.htm>

<sup>8</sup> "Protecting Children from Sexual Offences: The POCSO Act, 2012" by Anuja Gupta and Shabnam Nisha, Indian Journal of Psychiatry, 2013: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3683259/>

## Legislative intent behind reverse burden of proof in POCSO viz-e-viz the rights of accused

The Protection of Children from Sexual Offences (POCSO) Act, 2012 includes a provision for the reverse burden of proof in certain cases of sexual offences against children. The reverse burden of proof requires the accused to prove their innocence, rather than the prosecution having to prove their guilt. The legislative intent behind this provision is to provide a strong legal framework to protect children from sexual offences and to ensure that the perpetrators of such offences are brought to justice. However, this provision has been a subject of debate as it raises concerns regarding the rights of the accused.<sup>9</sup>

The legislative intent behind the reverse burden of proof in POCSO is to make the prosecution of sexual offences against children more effective and to provide a child-friendly system for handling such cases. The Act recognizes the vulnerability of children and the need for their protection, and aims to provide a strong legal framework for their protection. The reverse burden of proof is intended to shift the burden of proving innocence onto the accused, which is seen as a necessary measure to protect children from sexual offences.<sup>10</sup>

However, this provision has raised concerns regarding the rights of the accused. The burden of proof is a fundamental principle of criminal law, and the reverse burden of proof goes against this principle. It is argued that the provision violates the presumption of innocence, which is a cornerstone of criminal justice. The provision has been criticized for putting an undue burden on the accused and for making it difficult for them to prove their innocence.

The Indian judiciary has attempted to balance the rights of the accused with the protection of children under the POCSO Act. In a recent judgment, the Supreme Court of India held that the reverse burden of proof provision in POCSO is not violative of the Constitution of India, but cautioned that the provision should be applied carefully and only in cases where the evidence against the accused is strong and credible.<sup>11</sup>

### Legal framework for children as offenders

Children as offenders in the Indian legal framework are dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The JJ Act recognizes that children who come in conflict with the law are in need of care, protection, and rehabilitation rather than punishment. The Act provides for a child-friendly justice system and ensures that the rights and interests of children are protected.

Under the JJ Act, a person below the age of 18 years who commits an offence is considered a juvenile in conflict with the law. The Act provides for a separate juvenile justice system, which is different from the regular criminal justice system. The juvenile justice system aims to rehabilitate the child and reintegrate them into society. The system involves a range of interventions, including counseling, community service, and vocational training.

<sup>9</sup> "Reverse Burden of Proof in POCSO: A Critical Analysis" by Dr. Alok Kumar Yadav, Indian Journal of Child Protection and Care, 2019: <https://www.ijcpc.org/pdf/vol3issue1/Reverse-Burden-of-Proof-in-POCSO-A-Critical-Analysis.pdf>

<sup>10</sup> "Reverse Burden of Proof in POCSO: A Necessary Evil?" by Dhananjay Mahapatra, The Times of India, 2019: <https://timesofindia.indiatimes.com/india/reverse-burden-of-proof-in-pocso-a-necessary-evil/articleshow/71811070.cms>

<sup>11</sup> "Reverse burden of proof under POCSO Act cannot be allowed to operate mechanically" by Scroll Staff, Scroll.in, 2021: <https://scroll.in/latest/1008891/reverse-burden-of-proof-under-pocso-act-cannot-be-allowed-to-operate-mechanically-supreme-court>

The JJ Act provides for various measures to ensure that the rights of children in conflict with the law are protected. These include the right to legal representation, the right to be informed of the charges against them, the right to a speedy trial, and the right to privacy. The Act also provides for the establishment of juvenile justice boards and child welfare committees to oversee the welfare of children in conflict with the law.<sup>12</sup>

However, there have been concerns regarding the effectiveness of the juvenile justice system in addressing the issue of children in conflict with the law. Critics argue that the system is too lenient and that it fails to provide adequate deterrence to juvenile offenders.<sup>13</sup> There have been calls for the age of criminal responsibility to be lowered from 18 to 16 years, but this has been met with opposition from child rights activists who argue that it goes against the principles of child rights and the best interests of the child.<sup>14</sup>

### **Discourse behind age of criminal responsibility in India**

The discourse behind the age of criminal responsibility in India revolves around the question of whether the age of 18, which is the current age of criminal responsibility in the country, is appropriate or whether it should be lowered to 16. Those in favor of lowering the age of criminal responsibility argue that it will serve as a deterrent and hold juvenile offenders accountable for their actions. However, critics of the proposal argue that it goes against the principles of child rights and the best interests of the child.

One of the reasons cited by proponents of lowering the age of criminal responsibility is that it will serve as a deterrent to juvenile offenders. They argue that the current lenient juvenile justice system fails to provide adequate deterrence to juvenile offenders, leading to a rise in crimes committed by minors. Proponents of lowering the age of criminal responsibility also argue that it will bring juvenile offenders in line with adult offenders who can be held criminally responsible from the age of 18.<sup>15</sup>

However, opponents of the proposal argue that it goes against the principles of child rights and the best interests of the child. They argue that children who come in conflict with the law are often victims of poverty, abuse, neglect, and lack of education, and therefore should be provided with care and rehabilitation rather than punishment. Critics of the proposal also argue that it will result in more children being incarcerated and exposed to the criminal justice system, which can have long-term negative effects on their development and well-being.<sup>16</sup>

In 2019, the Ministry of Women and Child Development rejected a proposal to lower the age of criminal responsibility from 18 to 16 years, citing concerns about the impact of such a move on the welfare and rehabilitation of juvenile offenders.<sup>17</sup>

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<sup>12</sup> "Child Offenders and Juvenile Justice System in India" by Vignesh Karthik KR, International Journal of Science and Research, 2017: <https://www.ijsr.net/archive/v6i5/ART20172879.pdf>

<sup>13</sup> "India's Juvenile Justice System: From Protection to Punishment" by Sanya Talwar, The Diplomat, 2020: <https://thediplomat.com/2020/02/indias-juvenile-justice-system-from-protection-to-punishment/>

<sup>14</sup> "Should the age of criminal responsibility be lowered to 16 in India?" by Manoj Mitta, The Times of India, 2019: <https://timesofindia.indiatimes.com/blogs/voices/should-the-age-of-criminal-responsibility-be-lowered-to-16-in-india/>

<sup>15</sup> Ibid

<sup>16</sup> Supra 13

<sup>17</sup> "Age of criminal responsibility in India: Ministry rejects proposal to lower it to 16 years" by Scroll Staff, Scroll.in, 2019: <https://scroll.in/latest/926431/age-of-criminal-responsibility-in-india-ministry-rejects-proposal-to-lower-it-to-16-years>



## Analysis of reverse burden viz-e-viz age of criminal responsibility

The reverse burden of proof in the Protection of Children from Sexual Offences (POCSO) Act is a provision that places the burden of proving innocence on the accused rather than on the prosecution. This provision has been controversial, particularly in relation to juvenile offenders, as it may infringe upon their right to a fair trial.

In the case of juvenile offenders, the reverse burden of proof may be seen as problematic due to the fact that they are considered to be children and are therefore entitled to the protections afforded to them under the United Nations Convention on the Rights of the Child (UNCRC).<sup>18</sup> Article 40 of the UNCRC stipulates that "every child alleged as or accused of having infringed the penal law has at least the following guarantees", including "the right to be presumed innocent until proven guilty according to law". This right is also enshrined in Article 11 of the Universal Declaration of Human Rights<sup>19</sup> and Article 14 of the International Covenant on Civil and Political Rights.<sup>20</sup>

Proponents of the reverse burden of proof in POCSO argue that it is necessary to protect children from sexual offences and that it is therefore justifiable to place the burden of proof on the accused. However, critics argue that the provision goes against the principle of presumption of innocence and that it may result in innocent people being falsely accused and convicted.

In relation to the age of criminal responsibility, the reverse burden of proof in POCSO may be seen as particularly problematic for juvenile offenders who are below the age of 18. In India, the current age of criminal responsibility is 18 years, and juvenile offenders are dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act recognizes that juvenile offenders are still in the process of physical and psychological development and therefore requires that they be dealt with in a manner that is child-friendly and promotes their rehabilitation and reintegration into society.

Placing the burden of proving innocence on juvenile offenders who are accused of sexual offences under POCSO may be seen as a violation of their right to a fair trial and may also go against the principles of the Juvenile Justice Act. However, it is important to note that the reverse burden of proof applies only to specific offences under POCSO and not to all offences committed by juvenile offenders.

## Conclusion

The reverse burden of proof provision in the Protection of Children from Sexual Offences (POCSO) Act has been a topic of debate regarding the balance between the rights of the accused and the protection of child victims. While the provision is intended to provide additional protection to child victims, it has also been criticized for placing an unfair burden on the accused and potentially violating their right to a fair trial.

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<sup>18</sup>United Nations Convention on the Rights of the Child. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>19</sup>Art 11, Universal Declaration of Human Rights. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

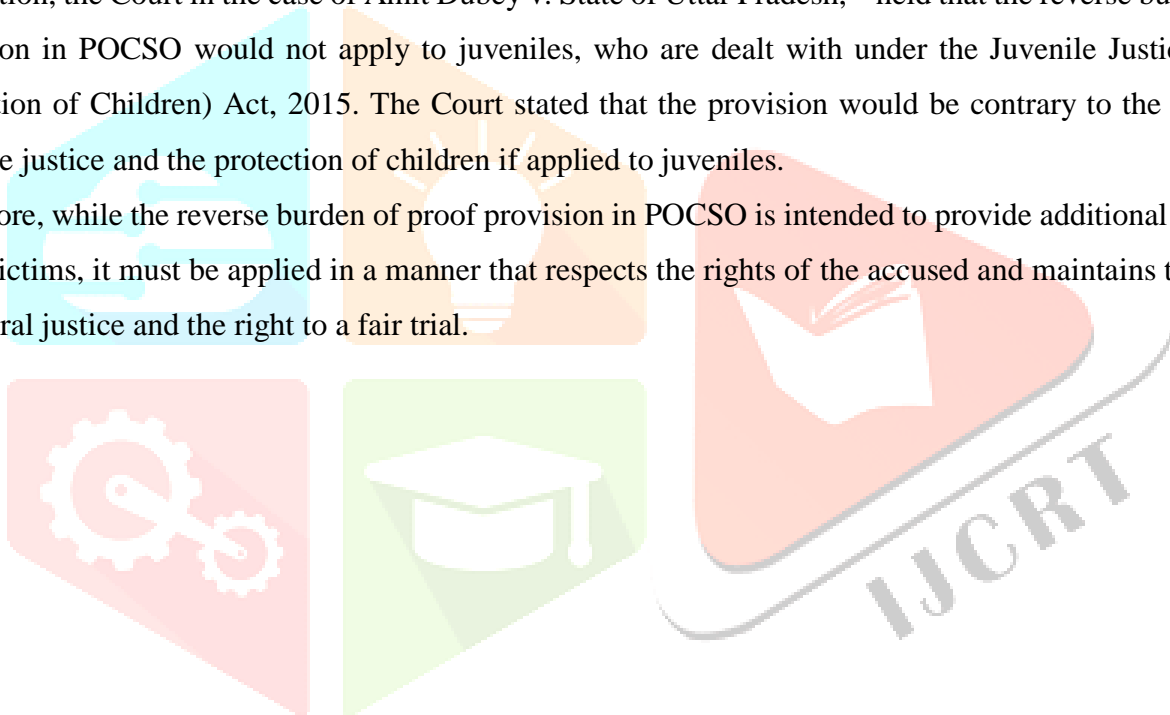
<sup>20</sup>Art 14, International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

In order to maintain a balance between the rights of the accused and the need to protect child victims, the Indian judiciary has imposed certain limitations on the application of the reverse burden of proof provision. In the case of *Sushila Aggarwal v. State (NCT of Delhi)*,<sup>21</sup> the Supreme Court of India held that the reverse burden of proof provision in POCSO would apply only to the limited extent that it shifts the burden of proving certain facts to the accused. The Court also emphasized that the provision cannot be used to shift the entire burden of proof to the accused.

Furthermore, the Court in *Sushila Aggarwal v. State (NCT of Delhi)* stated that the reverse burden of proof provision in POCSO should be applied in a manner that is consistent with the principles of natural justice and the right to a fair trial. The Court noted that the accused must be provided with sufficient opportunity to rebut the presumption created by the provision and that the prosecution must still prove its case beyond a reasonable doubt.

In addition, the Court in the case of *Amit Dubey v. State of Uttar Pradesh*,<sup>22</sup> held that the reverse burden of proof provision in POCSO would not apply to juveniles, who are dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court stated that the provision would be contrary to the principles of juvenile justice and the protection of children if applied to juveniles.

Therefore, while the reverse burden of proof provision in POCSO is intended to provide additional protection to child victims, it must be applied in a manner that respects the rights of the accused and maintains the principles of natural justice and the right to a fair trial.



<sup>21</sup> *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1.

<sup>22</sup> *Amit Dubey v. State of Uttar Pradesh*, (2020) 2 SCC 781.