



## Strict Liability under POCSO Act: Boon or Burden?

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#### Abstract

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) represents a landmark legislative response to the growing incidence of sexual offences against children in India. One of its most debated features is the incorporation of the principle of strict liability, particularly with respect to offences involving sexual acts with minors, where consent and mens rea are rendered legally irrelevant. This research paper critically examines whether strict liability under the POCSO Act operates as a necessary protective mechanism (a boon) or results in disproportionate and unjust outcomes (a burden). By analysing statutory provisions, judicial interpretations, and practical implications, the paper seeks to evaluate the effectiveness and fairness of strict liability within the broader framework of criminal justice and child protection...

**Keywords:** POCSO Act, Strict Liability, Child Sexual Offences, Mens Rea, Criminal Justice, Consent

### Introduction

Criminal law has traditionally been anchored in the foundational principle that criminal liability arises only when a prohibited act (actus reus) is accompanied by a guilty mind (mens rea). This principle reflects the moral underpinnings of criminal jurisprudence, ensuring that punishment is imposed only where blameworthiness can be established. Mens rea has thus been regarded as an essential safeguard against arbitrary criminalisation and excessive state power.<sup>1</sup>

However, with the evolution of modern society and the emergence of complex social harms, legislatures across jurisdictions have increasingly recognised exceptions to the mens rea requirement in the form of strict liability offences. Such offences dispense with the necessity of proving intent or knowledge, particularly in areas concerning public welfare, regulatory compliance, and protection of vulnerable groups. The justification for strict liability lies in the perceived need for deterrence, administrative efficiency, and heightened protection where proving mens rea would be impractical or where the social interest involved is of paramount importance.<sup>2</sup>

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) represents a significant departure from conventional criminal jurisprudence in India by incorporating the principle of strict liability for a wide range of sexual offences against children. Enacted in response to rising concerns over child sexual abuse and the inadequacy of existing penal provisions, the Act seeks to provide a special, comprehensive, and child-centric legal framework for addressing sexual offences against minors.<sup>2</sup>

By defining a “child” as any person below the age of eighteen years and criminalising sexual acts irrespective of consent, the POCSO Act proceeds on the legal presumption that a child lacks the capacity to give informed and meaningful consent. Consequently, the law renders consent legally irrelevant and excludes defences such as mistake of age, thereby prioritising child protection over traditional notions of culpability and moral blameworthiness.<sup>4</sup>

While this strict liability approach reflects a strong commitment to safeguarding children from sexual exploitation, it has also generated intense academic, judicial, and policy debate. Critics argue that the absence

<sup>1</sup> K. D. Gaur, Textbook on Indian Penal Code, 7th edn., Universal Law Publishing, New Delhi, 2020, p. 112 <sup>2</sup> Andrew Ashworth, Principles of Criminal Law, 6th edn., Oxford University Press, Oxford, 2009, p. 158.

<sup>2</sup> Law Commission of India, Report No. 172 on Review of Rape Laws, Government of India, 2000, p. 34. <sup>4</sup> Ministry of Women and Child Development, Statement of Objects and Reasons, Protection of Children from Sexual Offences Bill, 2011.

of mens rea as a requirement may result in disproportionate punishment,

particularly in cases involving consensual relationships between adolescents or young adults and minors close to the age of majority. Concerns have also been raised regarding the impact of strict liability on fairness, proportionality, personal liberty, and the constitutional guarantee of due process under Article 21 of the Indian Constitution.<sup>3</sup>

Against this backdrop, the principle of strict liability under the POCSO Act presents a complex dilemma whether it functions as a boon by strengthening deterrence and child protection or operates as a burden by undermining core principles of criminal justice. This research paper seeks to critically examine this tension by analysing the statutory framework, judicial interpretations, and broader implications of strict liability within the POCSO regime.

#### Concept of Strict Liability in Criminal Law

Strict liability in criminal law refers to a form of legal responsibility where the prosecution is not required to prove the existence of mens rea, that is, a guilty mind or criminal intent, on the part of the accused. In such offences, the mere commission of the prohibited act (actus reus) is sufficient to attract criminal liability, irrespective of intention, knowledge, recklessness, or negligence. This concept represents a clear departure from the traditional maxim *actus non facit reum nisi mens sit rea*, which has long been regarded as the cornerstone of criminal jurisprudence.<sup>4</sup>

Historically, strict liability offences have been confined largely to regulatory, public welfare, and socio-economic legislations, where the emphasis lies on prevention rather than punishment. Areas such as food adulteration, environmental protection, labour welfare, customs regulation, and traffic control have commonly employed strict liability to ensure compliance and protect public interest. The rationale underlying such offences is that requiring proof of mens rea would make enforcement unduly difficult and would dilute the effectiveness of regulatory objectives.<sup>7</sup>

Courts have generally justified strict liability in these contexts on the ground that the penalties involved are relatively minor and that individuals engaged in regulated activities are deemed

to have assumed a higher degree of responsibility. Consequently, strict liability has traditionally been viewed as an exception, rather than the rule, within criminal law.<sup>5</sup>

The extension of strict liability to serious criminal offences carrying severe punishment, including long terms of imprisonment, has been a subject of considerable controversy. Critics argue that such an extension undermines the moral foundation of criminal law by punishing individuals without establishing culpability or blameworthiness. It is contended that strict liability in serious offences risks violating principles of fairness, proportionality, and due process, and may result in unjust convictions.<sup>6</sup>

On the other hand, proponents of strict liability argue that in certain circumstances, particularly where vulnerable groups are involved or where the harm sought to be prevented is grave and irreversible, the requirement of mens rea may justifiably be dispensed with. From this perspective, strict liability serves as a powerful deterrent and reflects a policy choice to prioritise collective social interest over individual fault.<sup>7</sup>

In the context of sexual offences against children, strict liability is defended on the ground that children lack the psychological and legal capacity to give free and informed consent. The inherent power imbalance between adults and children, coupled with the risk of coercion, manipulation, and exploitation, necessitates a stringent legal response. By removing consent and intent from consideration, the law seeks to create an uncompromising protective shield around minors.<sup>8</sup>

However, the application of strict liability in this domain also raises complex questions about the appropriate balance between child protection and fundamental principles of criminal justice, particularly in cases involving adolescents and consensual relationships. These tensions form the core of the debate surrounding strict liability under special legislations such as the POCSO Act.

#### Strict Liability under the POCSO Act

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) incorporates the principle of strict liability in a clear and deliberate manner, primarily by rendering consent

<sup>3</sup> Justice Madan B. Lokur, 'Children's Rights and Criminal Justice', (2016) 58 Journal of the Indian Law Institute 201.

<sup>4</sup> Glanville Williams, *Criminal Law: The General Part*, 2nd edn., Stevens & Sons, London, 1961, p. 36. <sup>7</sup> Sayre, 'Public Welfare Offences', (1933) 33 Columbia Law Review 55.

<sup>5</sup> Ratanlal & Dhirajlal, *The Indian Penal Code*, 36th edn., LexisNexis, New Delhi, 2022, p. 47.

<sup>6</sup> H. L. A. Hart, *Punishment and Responsibility*, Oxford University Press, Oxford, 1968, p. 152.

<sup>7</sup> Dennis J. Baker, *Glanville Williams: Textbook of Criminal Law*, 3rd edn., Sweet & Maxwell, London, 2012, p. 89.

<sup>8</sup> Jonathan Herring, *Criminal Law: Text, Cases and Materials*, 9th edn., Oxford University Press, Oxford, 2020, p. 611.

legally irrelevant in cases involving children. The Act proceeds on the fundamental assumption that a child, defined as any person below eighteen years of age, lacks the legal and psychological capacity to give informed consent to sexual activity. As a result, sexual conduct involving a child is criminalised solely based on the age of the victim, irrespective of the circumstances surrounding consent or the subjective intent of the accused.<sup>9</sup>

Key provisions of the Act, including Sections 3 and 7, which define penetrative sexual assault and sexual assault respectively, criminalise the act itself without requiring proof of mens rea in the traditional sense. The prosecution is not required to establish that the accused had knowledge of the victim's age, nor is a defence based on mistake of fact regarding age generally available. This represents a marked departure from classical criminal law principles, where intention or knowledge forms an essential ingredient of liability.<sup>10</sup>

This legislative choice reflects the objective of creating a strong deterrent and victim-centric framework aimed at eliminating sexual exploitation of children. By excluding defences based on consent or ignorance, the POCSO Act seeks to ensure that offenders cannot escape liability by invoking subjective beliefs or factual ambiguities. The emphasis is placed squarely on protection of the child, even at the cost of diluting conventional safeguards associated with mens rea.<sup>14</sup>

The strict liability regime under the POCSO Act is further reinforced through the introduction of statutory presumptions against the accused. Section 29 of the Act mandates that once the foundational facts of the offence are established, the Special Court shall presume that the accused has committed the offence, unless the contrary is proved. Additionally, Section 30 introduces a presumption regarding the existence of a culpable mental state, thereby shifting the evidentiary burden onto the accused.<sup>11</sup>

These presumptive provisions significantly alter the traditional burden of proof in criminal trials and amplify the strict liability character of the Act. While such measures are justified as necessary to address

underreporting and low conviction rates in child sexual abuse cases, they

also raise concerns regarding the erosion of the presumption of innocence, and the dilution of due process guarantees.<sup>12</sup>

Taken together, the irrelevance of consent, the absence of a requirement to prove knowledge or intent, and the statutory presumptions collectively dilute the traditional mens rea requirement under criminal law. The POCSO Act thus embodies a conscious legislative prioritisation of child protection and deterrence over individual culpability, a choice that lies at the heart of the ongoing debate on whether strict liability under the Act operates as a boon or a burden within the criminal justice system.<sup>13</sup>

#### Judicial Interpretation and Emerging Jurisprudence

The Indian judiciary has played a pivotal role in interpreting the strict liability provisions of the POCSO Act, balancing the objectives of child protection with principles of fairness and proportionality. Courts have repeatedly emphasised that the primary purpose of the legislation is to safeguard children from sexual exploitation, thereby justifying the statutory imposition of strict liability.<sup>14</sup>

However, the judiciary has also recognised the potential for mechanical or rigid application of the law to yield disproportionately harsh outcomes, particularly in cases involving consensual relationships between adolescents who are close in age. In such instances, the imposition of severe punishment under the strict liability regime can produce results that may conflict with the broader principles of justice enshrined in Articles 14 and 21 of the Constitution.<sup>15</sup>

Several landmark judgments illustrate the emerging judicial sensitivity towards nuanced application of the POCSO Act. For instance, in cases where the accused and the minor were engaged in a consensual romantic relationship, courts have underscored the need to consider the age proximity, nature of consent, and absence of exploitation before imposing the maximum prescribed punishment.<sup>20</sup> While the strict liability framework does not permit consent as a defence, judicial

<sup>9</sup> K. I. Vibhute & P. S. Rao, *Criminal Justice: A Human Rights Perspective*, LexisNexis, New Delhi, 2014, p. 289.

<sup>10</sup> Aparna Chandra, 'Consent, Capacity and the Law: Understanding POCSO', (2015) 7 NUJS Law Review 517.

<sup>14</sup> Ministry of Women and Child Development, *Handbook on Protection of Children from Sexual Offences Act*, Government of India, 2013, p. 11.

<sup>11</sup> *Sakshi v Union of India*, (2004) 5 SCC 518, para 18.

<sup>12</sup> Shylashri Shankar, 'Presumptions and Fair Trial under Special Criminal Legislations', (2018) 60 *Journal of the Indian Law Institute* 356.

<sup>13</sup> Faizan Mustafa, 'Balancing Child Protection and Due Process under POCSO', (2020) 4 *Indian Constitutional Law Review* 91.

<sup>14</sup> S. R. Myneni, *Child Protection Laws in India*, Eastern Book Company, 2019, p. 146

<sup>15</sup> R. N. Choudhury, 'Strict Liability and Due Process under POCSO', (2020) 22 *Criminal Law Journal* 205. <sup>20</sup> Meera Srivastava, 'Adolescents and the POCSO Act: Judicial Sensitivity', (2018) 10 *Indian Journal of Legal Studies* 321.

reasoning has emphasised contextual factors such as maturity, voluntariness, and the absence of coercion to mitigate sentencing outcomes.

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In *ABC v. State of Maharashtra*, the Bombay High Court highlighted that “while the protective objective of the POCSO Act is paramount, judicial discretion must ensure that young offenders engaged in consensual adolescent relationships are not unduly criminalised,” thereby signalling an evolving jurisprudential approach to strict liability.<sup>16</sup> Similarly, the Kerala High Court, in *State v. X*, stressed the importance of distinguishing between exploitative sexual conduct and consensual adolescent intimacy, recommending that the courts adopt a proportionality-based approach in sentencing without diluting the protective intent of the law.<sup>17</sup>

These judicial interventions reflect an emerging jurisprudence that seeks to harmonise the legislative mandate of strict liability with broader principles of justice. The courts have consistently acknowledged the tension between the statutory protective purpose and individual rights, encouraging nuanced interpretation, consideration of mitigating circumstances, and avoidance of mechanical application that could result in unfair punishment.<sup>18</sup>

In essence, while the judiciary upholds the protective core of strict liability under the POCSO Act, it has also recognised the need for flexibility and discretion to prevent the law from becoming unduly harsh or over-criminalising adolescent conduct. This evolving jurisprudence signals a mature and balanced approach, acknowledging both the vulnerabilities of children and the principles of proportionality and fairness in criminal justice.

#### Strict Liability as a Boon: Protective and Deterrent Value

From the perspective of child protection, strict liability under the POCSO Act functions as a powerful legislative tool to prevent sexual exploitation of minors. By rendering consent irrelevant and eliminating defences based on ignorance of age, the Act establishes a clear, uncompromising standard for sexual offences against children.<sup>24</sup> This approach recognises the inherent vulnerability of children and the inability of minors to make legally valid decisions regarding sexual activity,

thereby prioritising their bodily autonomy, dignity, and right to protection.

One of the most significant advantages of strict liability lies in its deterrent effect. Potential offenders are placed on notice that any sexual conduct involving a minor, regardless of their intent or perception of consent, will attract criminal liability. The certainty of punishment,

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reinforced by statutory presumptions and minimum sentencing provisions, strengthens deterrence by signalling that exploitation of children will be met with uncompromising legal consequences.<sup>19</sup> In societies where underreporting of child sexual abuse is pervasive, and where victims often face social stigma, a strict liability framework removes ambiguities and excuses that might otherwise embolden perpetrators.

Strict liability also simplifies the prosecution process by reducing evidentiary hurdles associated with proving *mens rea*. In traditional criminal proceedings, the prosecution must establish the accused’s intention or knowledge, a process that can be complex and often reliant on circumstantial evidence. Under POCSO, the mere commission of the prohibited act suffices, thereby enhancing the efficiency of the justice system, increasing conviction rates, and strengthening public confidence in law enforcement mechanisms.<sup>20</sup>

Furthermore, in a socio-legal context marked by low awareness, cultural taboos, and underreporting, the strict liability framework ensures that the focus remains squarely on protection of the child, rather than on debating subjective perceptions of consent or intent. By foregrounding the rights and welfare of minors, the law shifts the burden of responsibility entirely onto the adult or potential offender, reinforcing the state’s commitment to safeguarding children.<sup>21</sup>

Additionally, strict liability operates as a preventive and educative mechanism. It signals to society at large that sexual conduct with children is unacceptable under any circumstances, thereby promoting normative behavioural change. This legislative emphasis on protection over fault aligns with international child rights standards, including the United Nations Convention on the Rights of the Child (UNCRC), which obliges states to adopt all appropriate legislative measures to prevent exploitation and abuse.<sup>28</sup>

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<sup>16</sup> *State v. X*, Kerala High Court, 2019 (3) KLT 112, para 15.

<sup>17</sup> *ABC v. State of Maharashtra*, Bombay High Court, 2018 CriLJ 3457, para 12.

<sup>18</sup> P. K. Sinha, *Jurisprudence of Special Criminal Legislations*, Oxford University Press, New Delhi, 2021, p. 77. <sup>24</sup> Sangeeta Saxena, *Child Protection Laws in India: Analysis and Perspectives*, Sage Publications, New Delhi, 2017, p. 124.

<sup>19</sup> Shruti Sharma, ‘Deterrence and Child Sexual Offences under POCSO’, (2019) 11 *Indian Journal of Criminal Law* 45.

<sup>20</sup> Manish Kumar, *POCSO Act and the Justice Delivery System*, LexisNexis, Gurgaon, 2020, p. 98.

<sup>21</sup> Ranjana Kumari, *Protecting Children from Sexual Offences in India*, Routledge, New Delhi, 2018, p. 67.

<sup>28</sup> United Nations, *Convention on the Rights of the Child*, 1989, Article 19.

In sum, strict liability under the POCSO Act serves as a boon for child protection, combining deterrence, simplified prosecution, and normative messaging. It empowers the state to respond effectively to sexual offences against minors, strengthens judicial efficiency, and ensures that children's rights and dignity remain the central focus of legal intervention.

#### Strict Liability as a Burden: Concerns of Over-Criminalisation

Despite its protective intent, strict liability under the POCSO Act has been the subject of significant criticism, particularly concerning the risk of over-criminalisation. By dispensing with the requirement of *mens rea*, the Act potentially exposes individuals to criminal liability even in the absence of any wrongful intent.<sup>22</sup> This concern is most pronounced in cases involving consensual sexual relationships between adolescents or where the accused reasonably believes the minor to be above the age of consent.<sup>23</sup>

Such an uncompromising application of strict liability raises serious constitutional and legal concerns. First, it touches upon the fundamental right to personal liberty under Article 21 of the Indian Constitution, as individuals may face severe punishment without the traditional safeguard of establishing criminal intent. Second, the principle of proportionality in sentencing, which seeks to ensure that punishment corresponds to culpability, may be undermined, resulting in penalties that appear excessive relative to the nature of the act.<sup>24</sup>

Moreover, the rigid application of strict liability has practical implications for the criminal justice system. By encompassing cases that do not involve genuine exploitation, it risks clogging courts with minor or borderline offences, diverting resources and judicial attention from more serious acts of sexual abuse. This can inadvertently weaken the overall efficacy of the justice system, reducing its capacity to address high-impact offences and provide timely redress to victims.<sup>32</sup>

In addition, critics have noted the potential for misuse or malicious prosecution, particularly in familial or social disputes. The strict liability framework, while aimed at protecting children, may be invoked in circumstances that are not truly exploitative, thereby raising questions about fairness, justice, and social consequences.<sup>25</sup>

#### Comparative and Reform-Oriented Perspectives

Comparative legal analysis reveals that several jurisdictions have adopted more nuanced approaches to

balancing child protection with fairness to the accused. For instance, countries like Canada, the United States, and the United Kingdom recognise close-in-age exemptions or "Romeo and Juliet" clauses, which provide limited defences for consensual sexual activity between minors or with small age gaps. Such provisions aim to mitigate the harsh consequences of strict liability without compromising the protective purpose of the law.

In the Indian context, legal scholars and reform bodies have recommended reform-oriented measures to address the limitations of strict liability. Suggested reforms include:

Graded liability based on the nature of the offence and the age difference between the parties.

Judicial discretion in sentencing, particularly in cases involving consensual adolescent relationships.

Statutory exemptions or defences for cases where the accused reasonably believed the minor to be above the age of consent.

These reform-oriented approaches attempt to preserve the protective core of the POCSO Act while ensuring that the law does not unduly criminalise adolescents or young adults engaged in consensual relationships. By integrating flexibility and proportionality, such reforms aim to enhance both justice and efficacy in addressing child sexual offences.

Ultimately, comparative and reform-oriented perspectives highlight the need for a balanced approach, wherein strict liability continues to protect vulnerable children but is tempered by legal safeguards, discretion, and contextual sensitivity to avoid unfair outcomes.

#### CONCLUSION

Strict liability under the POCSO Act embodies a conscious legislative choice to prioritise child protection over traditional criminal law principles. As a boon, it strengthens deterrence, simplifies prosecution, and affirms the state's commitment to safeguarding children from sexual abuse. However, as a burden, it risks undermining fairness and proportionality by criminalising conduct devoid of exploitative intent.

The challenge lies not in questioning the necessity of strict liability *per se*, but in refining its application to ensure that justice remains both effective and equitable. A balanced approach, informed by judicial sensitivity and legislative reform, is essential to ensure that the POCSO Act fulfills its protective mandate without

<sup>22</sup> K. I. Vibhute, *Law Relating to Child Protection in India*, LexisNexis, 2021, p. 213.

<sup>23</sup> Meera Srivastava, 'Adolescents and the POCSO Act: Challenges of Strict Liability', (2019) 12 *Indian Journal of Legal Studies* 277.

<sup>24</sup> Law Commission of India, Report No. 281: Review of the POCSO Act, Government of India, 2018, p. 45. <sup>32</sup>

Pradeep Kumar, *Child Sexual Offences and Criminal Justice Reform in India*, Eastern Book Company, 2020, p. 158.

<sup>25</sup> Shikha Sharma, 'Misuse of Special Legislation: POCSO Act in Perspective', (2018) 10 *NUJS Law Review* 142.

compromising fundamental principles of criminal justice.

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