

Research Article

Between Protection and Prejudice: A Critical Analysis of Strict Liability Under the POCSO Act

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Abstract: The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) stands as a significant legislative measure aimed at addressing the increasing incidence of sexual offences against children in India. A particularly contentious aspect of the Act is its incorporation of the principle of strict liability, especially in cases involving sexual acts with minors, where both consent and mens rea are considered legally immaterial. This paper critically explores whether the imposition of strict liability under the POCSO framework functions as an essential safeguard for child protection or leads to disproportionate and potentially unjust outcomes. Through an analysis of statutory provisions, judicial interpretations, and practical challenges, the study evaluates the balance between effectiveness and fairness within the broader context of criminal justice and child rights protection.

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

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INTRODUCTION

Criminal law has traditionally been grounded in the fundamental principle that liability arises only when a wrongful act (actus reus) is accompanied by a culpable mental state (mens rea). This doctrine reflects the moral foundation of criminal jurisprudence, ensuring that punishment is imposed only where an individual's blameworthiness is clearly established. Mens rea has thus been regarded as an essential safeguard against arbitrary criminalisation and excessive state power.¹

However, with the progression of modern society and the rise of complex social harms, legislatures across jurisdictions have increasingly carved out exceptions to the requirement of mens rea through the introduction of strict liability offences. These offences eliminate the need to establish intent or knowledge, particularly in domains related to public welfare, regulatory enforcement, and the protection of vulnerable sections of society. 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.²

The Protection of Children from Sexual Offences Act, 2012 marks a notable shift from traditional criminal jurisprudence in India by embedding the principle of strict liability across a broad spectrum of sexual offences against children. Enacted in response to growing concerns over child sexual abuse and the limitations of existing penal laws, the Act aims to establish a specialised, comprehensive, and child-centric legal framework for effectively addressing offences involving minors.³

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.⁴

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 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.⁵

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.

UNDERSTANDING STRICT LIABILITY AS A CRIMINAL LAW CONCEPT

Strict liability in criminal law denotes a form of liability wherein the prosecution is not obligated to establish mens rea, or a guilty state of mind, on the part of the accused. In such cases, the mere commission of the prohibited act (*actus reus*) is sufficient to impose criminal liability, regardless of intent, 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.⁶

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.⁷

Indian 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.⁸

The extension of strict liability to heinous 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.⁹

Conversely, supporters of strict liability contend that in specific situations—especially where vulnerable groups are at risk or where the potential harm is severe and irreversible—such an approach is justified 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.¹⁰

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.¹¹

However, the application of strict liability in this context gives rise to intricate concerns regarding the proper balance between safeguarding children and upholding core principles of criminal justice, especially in cases involving adolescents and ostensibly consensual relationships. These tensions form the core of the debate surrounding strict liability under special legislations such as the POCSO Act.

APPLICATION OF STRICT LIABILITY IN THE POCSO REGIME

The POCSO Act explicitly incorporates the principle of strict liability by treating consent as legally immaterial in cases involving children. The Act is founded on the premise that a child— defined as any individual below the age of eighteen— does not possess the legal or psychological capacity to provide valid consent to sexual activity. Consequently, any sexual act involving a minor is criminalised purely on the basis of the victim's age, irrespective of the surrounding circumstances or the accused's intent.¹²

Provisions of the POCSO 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.¹³

The Protection of Children from Sexual Offences Act, 2012 clearly embeds the doctrine of strict liability by rendering consent legally insignificant in cases involving minors. It is based on the understanding that a child defined as a person below eighteen years of age lacks the legal and psychological capacity to give informed consent to sexual activity. Accordingly, any sexual act involving a minor is treated as an offence solely on account of the victim's age, regardless of the surrounding circumstances or the intent of the accused. The emphasis is placed squarely on protection of the child, even at the cost of diluting conventional safeguards associated with mens rea.¹⁴

The strict liability framework under the POCSO Act is further strengthened by the incorporation of statutory presumptions against the accused. Section 29 provides that once the foundational elements of the offence are established, the Special Court is required to presume that the accused has committed the offence, unless proven otherwise. Additionally, Section 30 introduces a presumption regarding the existence of a culpable mental state, thereby shifting the evidentiary burden onto the accused.¹⁵

These presumptive provisions substantially modify the traditional burden of proof in criminal trials, thereby reinforcing the strict liability nature of the Act. While such measures are often justified as essential to counter underreporting and low conviction rates in cases of child sexual abuse, they simultaneously raise concerns about the weakening of the presumption of innocence and the potential dilution of due process safeguards.¹⁶

Collectively, the exclusion of consent, the absence of any requirement to establish intent or knowledge, and the presence of statutory presumptions significantly weaken the traditional mens rea requirement in criminal law. The POCSO Act therefore reflects a deliberate legislative preference for child protection and deterrence over individual culpability—an approach that remains central to the continuing debate on whether strict liability under the Act serves as a boon or a burden within the criminal justice system.¹⁷

JUDICIAL DECISIONS

The Indian judiciary has played a crucial role in interpreting the strict liability provisions of the POCSO Act, striving to balance the objective of child protection with the principles of fairness and proportionality. Courts have consistently underscored that the primary aim of the legislation is to safeguard children from sexual exploitation, thereby justifying the statutory imposition of strict liability.¹⁸

However, the judiciary has also acknowledged that a mechanical or inflexible application of the law may lead to disproportionately harsh outcomes, particularly in cases involving consensual relationships between adolescents who are close in age. In such situations, the imposition of stringent penalties under the strict liability framework can result in consequences that may be at odds with the broader principles of justice embodied in Articles 14 and 21 of the Constitution.¹⁹

Several landmark judgments reflect a growing judicial awareness and a more nuanced approach to the 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.²⁰ Although the strict liability framework excludes consent as a valid defence, judicial reasoning has increasingly taken into account contextual factors such as the maturity of the individuals involved, the voluntariness of the relationship, and the absence of coercion while determining appropriate sentencing.

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.²¹ 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.²²

These judicial interventions signify the development of an evolving jurisprudence that aims to reconcile the legislative intent of strict liability with overarching principles of justice. Courts have consistently recognised the inherent tension between the statute's protective objectives and individual rights, thereby promoting a nuanced approach that considers mitigating circumstances and avoids rigid application that may lead to unjust outcomes.²³

In sum, while the judiciary maintains the protective essence of strict liability under the POCSO Act, it has also recognised the importance of allowing a degree of flexibility and discretion to ensure that the law does not operate with undue

harshness or result in the over-criminalisation of adolescent conduct. This developing jurisprudence demonstrates a careful and balanced approach, taking into account both the need to protect children and the fundamental principles of proportionality and fairness in criminal justice.

STRICT LIABILITY AS A BOON: PROTECTIVE AND DETERRENT VALUE

Viewed through the lens of child protection, strict liability under the POCSO Act serves as a robust preventive framework against the sexual exploitation of minors. By disregarding consent and disallowing defences rooted in mistaken belief about age, the Act enforces a stringent and unequivocal standard for offences involving children. This framework is grounded in the recognition of children's inherent vulnerability and their limited capacity to make informed legal choices regarding sexual activity, thereby reinforcing the protection of their bodily integrity, dignity, and fundamental rights.

One of the key advantages of strict liability lies in its strong deterrent effect. It puts potential offenders on clear notice that any sexual involvement with a minor—irrespective of intent or perceived consent—will result in criminal liability. The certainty of punishment, supported by statutory presumptions and prescribed minimum sentences, reinforces this deterrence by conveying that the exploitation of children will invite firm and unequivocal legal consequences.²⁴ In contexts where child sexual abuse is widely underreported and victims often confront social stigma, a strict liability framework helps eliminate ambiguities and potential defences that might otherwise embolden offenders.

Furthermore, strict liability streamlines the prosecutorial process by minimising the evidentiary burden associated with proving *mens rea*. In conventional criminal trials, establishing the accused's intention or knowledge can be complex and frequently depends on circumstantial evidence. Under the POCSO regime, however, the mere commission of the prohibited act is sufficient to attract liability. This not only enhances procedural efficiency but also contributes to higher conviction rates and reinforces public trust in the criminal justice system.²⁵

Moreover, in a socio-legal environment characterised by limited awareness, deep-rooted cultural taboos, and widespread underreporting, the strict liability framework ensures that the emphasis remains firmly on the protection of the child rather than on subjective interpretations of consent or intent. By prioritising the rights and welfare of minors, the law places the entire burden of responsibility on the adult or potential offender, thereby reaffirming the state's commitment to the safeguarding of children.²⁶

Additionally, strict liability functions as both a preventive and educative tool. It conveys a clear societal message that any form of sexual conduct involving children is impermissible under all circumstances, thereby encouraging normative behavioural change. This legislative focus on protection rather than fault is also consistent 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.²⁷

In Totality, 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.

When Protection Becomes Excessive: Strict Liability and Over-Criminalisation

Notwithstanding its protective purpose, the strict liability regime under the POCSO Act has been widely critiqued for its potential to result in over-criminalisation. By removing the necessity of establishing *mens rea*, the law risks holding individuals criminally liable even in the absence of any culpable intent or conscious wrongdoing.²⁸ 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.²⁹

Such a rigid application of strict liability gives rise to significant constitutional and legal concerns. Firstly, it implicates the fundamental right to personal liberty under Article 21 of the Indian Constitution, as individuals may be subjected to severe punishment without the conventional safeguard of proving criminal intent. Secondly, it may undermine the principle of proportionality in sentencing, which requires that punishment be commensurate with culpability, thereby leading to outcomes that appear disproportionately harsh in relation to the nature of the act.³⁰

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.³¹

Additionally, 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.³²

TOWARDS REFORM: A COMPARATIVE PERSPECTIVE

Comparative legal analysis indicates that several jurisdictions have adopted more nuanced approaches to balancing child protection with fairness to the accused. For example, countries such as Canada, United States, and United Kingdom recognise close-in-age exemptions, often referred to as “Romeo and Juliet” clauses. These provisions offer limited defences in cases of consensual sexual activity between minors or where there is a minimal age difference, thereby reducing the harsh effects of strict liability without undermining the protective objective of the law.

In the Indian context, legal scholars and reform bodies have proposed several measures to address the limitations inherent in strict liability. These include:

The introduction of graded liability based on the nature of the offence and the age gap between the individuals involved.

- Granting greater judicial discretion in sentencing, particularly in cases involving consensual adolescent relationships.
- Providing statutory exemptions or defences where the accused had a reasonable belief that the minor was above the age of consent.

Such reform-oriented approaches seek to retain the protective essence of the POCSO Act while ensuring that it does not lead to the undue criminalisation of adolescents or young adults engaged in consensual relationships. By incorporating elements of flexibility and proportionality, these measures aim to enhance both fairness and effectiveness in addressing child sexual offences.

Ultimately, comparative and reform-focused perspectives underscore the importance of a balanced framework—one in which strict liability continues to safeguard vulnerable children, but is moderated through legal safeguards, judicial discretion, and contextual sensitivity to prevent unjust outcomes.

CONCLUSION

Strict liability under the POCSO Act reflects a deliberate legislative decision to prioritise the protection of children over conventional principles of criminal law. On the one hand, it serves as a boon by enhancing deterrence, streamlining the prosecutorial process, and reinforcing the state’s commitment to preventing sexual offences against minors. On the other hand, it operates as a burden by potentially compromising fairness and proportionality, particularly in cases where the conduct lacks any exploitative intent.

The central issue, therefore, is not the necessity of strict liability itself, but the need to refine its application so that justice remains both effective and equitable. A balanced approach—guided by judicial sensitivity and supported by legislative reform—is crucial to ensure that the POCSO Act achieves its protective objectives without undermining the foundational principles of criminal justice.

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