

Sexual Offences against Children: Harmonization of the Bharatiya Nyaya Sanhita with the POCSO Act

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Abstract-

The protection of children from sexual exploitation represents one of the most critical obligations of a modern criminal justice system. India has witnessed a significant evolution in its penal framework with the replacement of the Indian Penal Code, 1860, by the Bharatiya Nyaya Sanhita, 2023. Alongside this general criminal law framework operates the Protection of Children from Sexual Offences Act, 2012, a special statute enacted to address sexual crimes against minors through child-friendly procedures and stringent punishments. This research paper examines the extent to which the Bharatiya Nyaya Sanhita harmonizes with the objectives, definitions, and punishment policy of the POCSO Act. It analyses overlaps, continuities, and tensions between the two legal regimes, with a specific focus on definitional clarity, sentencing philosophy, procedural safeguards, and constitutional mandates. The study adopts doctrinal and comparative legal methodology, relying on statutory analysis, judicial interpretations, and policy documents. The paper argues that while the Bharatiya Nyaya Sanhita strengthens the general framework for sexual offences, effective child protection continues to depend on the primacy and careful implementation of the POCSO Act. Recommendations are offered to ensure the coherent application of both laws in practice.

Keywords –Bharatiya Nyaya Sanhita; POCSO Act; child sexual abuse; criminal law reform; punishment policy

Date of Submission: 24-01-2026

Date of acceptance: 06-02-2026

The protection of children from sexual exploitation constitutes one of the most fundamental obligations of a modern criminal justice system. Children occupy a position of heightened vulnerability within society, necessitating enhanced legal safeguards to protect their dignity, bodily integrity, and psychological well-being. In India, the legal framework governing sexual offences has undergone a significant transformation with the replacement of the Indian Penal Code, 1860, by the Bharatiya Nyaya Sanhita, 2023 (Bharatiya Nyaya Sanhita, 2023). Alongside this general penal legislation operates the Protection of Children from Sexual Offences Act, 2012, a special statute enacted to address sexual crimes against minors through child-friendly procedures and stringent punishment provisions (Protection of Children from Sexual Offences Act, 2012).

This research paper examines the extent to which the Bharatiya Nyaya Sanhita harmonises with the objectives, definitions, and punishment policy embodied in the POCSO Act. It analyses areas of overlap, continuity, and tension between the two legal regimes, with particular emphasis on definitional clarity, sentencing philosophy, procedural safeguards, and constitutional mandates. The study adopts a doctrinal and comparative legal methodology, relying on statutory interpretation, judicial decisions, and policy analysis. It argues that while the Bharatiya Nyaya Sanhita strengthens the general framework governing sexual offences, effective child protection continues to depend on the primacy and careful implementation of the POCSO Act. The paper concludes by offering recommendations to ensure the coherent and child-centric application of both laws in practice.

I. Introduction

Crimes of sexual violence against children strike at the very foundation of a civilised and rights-based society. Owing to their physical and mental immaturity, children require special safeguards and care, including appropriate legal protection. The constitutional framework of India explicitly recognises this obligation. Articles 15(3), 21, and 39(e) and (f) of the Constitution of India mandate the State to ensure conditions of freedom, dignity, and protection against exploitation for children (Constitution of India, 1950).

Against this constitutional backdrop, the enactment of the Protection of Children from Sexual Offences Act, 2012, marked a watershed moment in Indian criminal law. The Act introduced child-specific sexual offences, prescribed stringent punishments, and established victim-centric and child-friendly procedural mechanisms (Protection of Children from Sexual Offences Act, 2012). More recently, the Bharatiya Nyaya Sanhita, 2023, has replaced the colonial-era Indian Penal Code and restructured offences relating to sexual violence in line with contemporary constitutional values (Bharatiya Nyaya Sanhita, 2023). This legislative

transformation necessitates a careful examination of how the new penal code aligns with the existing special law governing sexual offences against children. The present study seeks to analyse this harmonisation, identify potential conflicts, and evaluate whether the combined framework adequately addresses the realities of child sexual abuse in India.

II. Evolution of the Legal Framework on Sexual Offences Against Children

Before the enactment of the POCSO Act, sexual offences against children were prosecuted under the general provisions of the Indian Penal Code, 1860. These provisions failed to recognise the distinct nature of child sexual abuse and were often inadequate in addressing offences that did not involve penetrative acts or physical resistance. Moreover, the earlier framework lacked gender neutrality and did not provide procedural safeguards tailored to the needs of child victims.

The enactment of the POCSO Act sought to address these deficiencies by introducing comprehensive and child-specific definitions of sexual assault, sexual harassment, and the use of children for pornographic purposes (Protection of Children from Sexual Offences Act, 2012). The Act also established special courts and mandated child-friendly procedures for reporting, investigation, and trial. The Bharatiya Nyaya Sanhita represents the next stage of criminal law reform, aiming to modernise substantive penal law, eliminate colonial terminology, and adopt a more victim-oriented approach to sexual offences (Bharatiya Nyaya Sanhita, 2023). Understanding this historical evolution is essential for evaluating whether the new penal code strengthens or dilutes the protection afforded to children.

III. Conceptual Framework of the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita seeks to redefine criminal liability in accordance with constitutional morality and contemporary social realities. It reorganises offences, revises punishment structures, and employs clearer language to enhance legal certainty and accessibility. In relation to sexual offences, the Sanhita emphasises consent, bodily autonomy, and personal dignity (Bharatiya Nyaya Sanhita, 2023).

However, as a general penal statute, the Bharatiya Nyaya Sanhita applies uniformly to offences against persons of all ages. This raises important questions regarding its interaction with child-specific legislation such as the POCSO Act. In this context, the established principle of *lex specialis derogat legi generali* assumes critical importance, requiring that the special law prevail over the general law in cases involving children.

IV. Salient Features of the POCSO Act, 2012

The POCSO Act constitutes a comprehensive and self-contained legal framework designed exclusively to protect children from sexual offences. It adopts a gender-neutral approach, recognises multiple forms of sexual abuse, and prescribes stringent minimum punishments for various offences (Protection of Children from Sexual Offences Act, 2012). The Act mandates compulsory reporting of offences, in camera trials, and the assistance of support persons to child victims throughout the legal process.

Special courts are established under the Act to ensure expeditious trials, reflecting the legislative intent to minimise secondary victimisation and procedural trauma. These distinctive features clearly differentiate the POCSO Act from general criminal law and underscore the necessity of maintaining its primacy in cases involving child victims.

V. Comparative Analysis of Offences and Definitions

A comparative analysis of the Bharatiya Nyaya Sanhita and the POCSO Act reveals both convergence and divergence in their treatment of sexual offences. While the Sanhita modernises the terminology and structure of sexual offences, the POCSO Act continues to provide more detailed, precise, and child-specific definitions (Bharatiya Nyaya Sanhita, 2023; Protection of Children from Sexual Offences Act, 2012).

Certain acts that may be subsumed under broader offence categories in the Sanhita are expressly articulated under the POCSO Act, thereby reducing interpretative ambiguity and evidentiary hurdles. Courts must therefore prioritise the application of the POCSO Act in cases involving children to faithfully implement legislative intent and constitutional mandates.

VI. Punishment Policy and Sentencing Philosophy

The punishment policy under the POCSO Act is characterised by strict minimum sentences, reflecting a strong deterrent orientation towards sexual offences against children (Protection of Children from Sexual Offences Act, 2012). In contrast, the Bharatiya Nyaya Sanhita, while enhancing penalties for sexual offences, permits greater judicial discretion in sentencing (Bharatiya Nyaya Sanhita, 2023).

This divergence raises significant questions regarding proportionality, deterrence, and rehabilitation. A harmonised sentencing approach must strike a careful balance between the need for deterrence and the constitutional principles of fairness, proportionality, and individualised justice.

VII. Procedural Safeguards and Child-Friendly Justice

One of the defining strengths of the POCSO Act lies in its emphasis on procedural safeguards. Child-friendly mechanisms for reporting offences, recording evidence, and conducting trials are designed to reduce trauma and encourage reporting (Protection of Children from Sexual Offences Act, 2012). The Bharatiya Nyaya Sanhita does not replicate these procedural protections, reinforcing the necessity of applying POCSO procedures in all cases involving children.

Effective training of police personnel, prosecutors, and judicial officers remains essential to ensure the meaningful implementation of these safeguards and to prevent secondary victimisation.

VIII. Constitutional and Human Rights Dimensions

Both the Bharatiya Nyaya Sanhita and the POCSO Act must be interpreted in consonance with constitutional guarantees and India's international human rights obligations. India is a signatory to the United Nations Convention on the Rights of the Child, which mandates that the best interests of the child be treated as a primary consideration in all actions concerning children (United Nations, 1989).

Judicial interpretation has consistently emphasised a rights-based approach to child protection, rooted in the principles of dignity, equality, and access to justice (Supreme Court of India, various years). Harmonisation of laws must therefore advance, rather than compromise, these constitutional and international commitments.

IX. Challenges in Implementation

Despite the existence of a robust legal framework, significant challenges persist in implementation. Under-reporting of offences, investigative delays, and inadequate specialised infrastructure undermine the effectiveness of child protection laws. Socio-cultural factors, including stigma, fear, and power imbalances, further impede enforcement.

Addressing these challenges requires not only legal reform but also sustained administrative commitment, institutional capacity-building, and broader social awareness.

X. Recommendations

This paper recommends clearer statutory guidance on the concurrent application of the Bharatiya Nyaya Sanhita and the POCSO Act. Judicial training programmes should prioritise child rights jurisprudence and trauma-informed adjudication. Strengthening special courts and victim support services is essential to ensure meaningful access to justice. Periodic legislative review should also be undertaken to address emerging and evolving forms of child sexual exploitation.

XI. Conclusion

The Bharatiya Nyaya Sanhita represents a significant milestone in the evolution of Indian criminal law. However, in matters concerning sexual offences against children, the POCSO Act remains the cornerstone of legal protection. True harmonisation lies not merely in the parallel existence of these statutes but in their coherent interpretation and application in a manner that places the child at the centre of the justice process. By aligning substantive law, procedural safeguards, and sentencing policy, India can move closer to fulfilling its constitutional promise of dignity, safety, and justice for every child.

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