

JUDICIAL FORMALISM AND CHILD PROTECTION: A CRITICAL ANALYSIS OF THE DELHI HIGH COURT RULING IN THE UNNAO RAPE CASE

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Abstract

*“Power, in the absence of a clear definition, is a shield.” The ruling of the Delhi High Court in the Unnao rape case is a classic example of how the lack of a definition of “public servant” under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) is being used to shield the powerful from accountability to the weakest members of society. By reducing the conviction of Member of Legislative Assembly (MLA) Kuldeep Singh Sengar for aggravated penetrative sexual assault under Section 5(c) of the POCSO Act to penetrative sexual assault under Section 3 of the POCSO Act on the basis of the fact that a member of the Legislative Assembly is not a “public servant” under the Indian Penal Code, 1860 (IPC), the High Court has adopted a stance that is both legally incorrect and morally repugnant. This article contends that the approach of the High Court is inconsistent with the approach of purposive and victim-centric interpretation of special protective legislation, which is at odds with the best interests of the child principle enshrined in the United Nations Convention on the Rights of the Child (UNCRC), and the article also highlights a critical gap in the definition of “**public servant**” under the relevant legislation. It concludes with a recommendation that technical interpretation must not be permitted to act as a shield for those in authority from the enhanced accountability that the POCSO Act was specifically designed to impose.*

Keywords: minor, public servant, MLA, POCSO Act, purposive interpretation, child rights, bail

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Introduction

The Protection of Children from Sexual Offences Act, 2012, was enacted to implement India's obligations under the UNCRC, providing a comprehensive framework to address sexual offenses against children below the age of eighteen. The cornerstone of the Act is the best interest of the child principle, which must be a primary consideration in any inquiry, as emphasized in Article 3 of the UNCRC, supplemented by Article 15(3) of the Constitution of India. The aggravated offenses, including Section 5(c), of the Act demonstrate the legislative intent to hold abusers of authority accountable for their offenses.

In the recent Delhi High Court judgment in *Kuldeep Singh Sengar v. Central Bureau of Investigation* (2024), a critical question has arisen: whether the protective purpose of the POCSO Act can be defeated through the incorporation of restrictive definitions from a general penal code. This article critically evaluates this question through the lens of the child rights paradigm, general principles of interpretation, and relevant case law.

Background of the Case

On 4 June 2017, a 17-year-old victim was raped in Uttar Pradesh by a BJP MLA, Kuldeep Singh Sengar, and his associate. The police did not register a First Information Report, and the victim's father was arrested on false charges of possession of arms and died in custody after being subjected to fourteen injuries. The perpetrator, Sengar, was convicted of culpable homicide punishable under Section 304 Part II of the IPC. Further the victim herself met with a road accident in 2019, in which two of the victim's relatives were killed and the victim herself was injured, the Supreme Court transferred the case to Delhi. The victim's case was tried by a Special Court in Delhi, and the perpetrator, Sengar, was convicted of several IPC sections and, most importantly, of Section 5(c) of the POCSO Act, for which he was sentenced to life in prison.

The High Court's Reasoning

The Delhi High Court examined the applicability of the POCSO Act, specifically whether the classification of penetrative sexual assault by a "public

servant” as an aggravated offence, which attracts a minimum of twenty years’ rigorous imprisonment, applies to Sengar. Since the POCSO Act does not specifically define “public servant,” the Court had to refer to the IPC, Section 21, which defines “public servant.” However, the Court found that the definition does not specifically include a “member of the legislature of a State,” and hence, the conviction was reduced to the charge of penetrative sexual assault under Section 3 of the POCSO Act. Bail was also granted since Sengar had served more than the minimum seven years’ imprisonment, which was the minimum prior to the 2019 amendment. The Court did not apply the increased penalties as per the Protection of Children from Sexual Offences (Amendment) Act, 2019, since it found the retrospective application not permissible.

The Supreme Court’s Intervention

The Supreme Court stayed the order of the High Court on 29 December 2025, observing the unusual circumstances of the case, which included the separate conviction of Sengar for the custodial death of the survivor’s father, as well as the possibility of simultaneous release in two cases. The Chief Justice of India pointed to the absurdity of the High Court’s logic, which imposed harsher sentences on junior state officials such as police constables, while legislators with much higher powers would be let off scot-free, and asked if such an outcome was possibly in line with the object of the POCSO Act.

Critical Analysis

Formalistic Interpretation Contrary to Purposive Principles

It is a primary canon of interpretation that special protective legislation is to be interpreted purposively, in a manner consistent with, rather than in conflict with, the object of the legislation. As a leading text on the subject, Bennion on Statutory Interpretation, states, “Where the enactment is protective in character, the court must prefer the construction which most effectively performs the protective function.” This has been consistently followed by the Supreme Court in India in the context of the POCSO Act, holding, in a number of cases, that the court must interpret the Act in a manner consistent with the object of protecting the child survivor.

The blanket adoption of the IPC’s definitions into the POCSO Act appears

to be doctrinally incorrect. It does so without assessing whether it is beneficial to the protective object of the Act. POCSA Act is a paradigm shift in dealing with Child Sexual Abuse in India on account of its replacement of the IPC with a special law. Subordinating a special law to a general law is a negation of a paradigm shift.

The “Public Servant” Issue: An Interpretatively Contested Question

The finding of the High Court that an MLA cannot be characterized as a “public servant” under Section 21 of the IPC must be understood with some caveats. The question of whether an MLA qualifies to be characterized as a “public servant” under Section 21 of the IPC is an interpretatively contested question, which has not been conclusively decided. The definition of “public servant” under Section 21 of the IPC is an inclusive one, covering only a non-exhaustive list of individuals who perform public service. The question of the applicability of the definition of a “public servant” to a Member of Parliament was addressed in a different context in the Supreme Court judgment in *P.V. Narasimha Rao v. State* (1998).

More fundamentally, even where it is accepted that the IPC definition is used as a reference point, it is still open to the courts to interpret the definition as it is incorporated in a manner that is consistent with the object of the POCSO Act. The High Court does not appear to have engaged with this analysis with sufficient rigor. In any event, where the aggravated category of abuse defined by the POCSO Act includes abuse by a person in a position of trust or authority over a child, it is arguable that legislators who hold a significant amount of power in their constituency would need to be subjected to a much stronger test than a bare reference.

Incompatibility with the Child Rights Framework

The POCSO Act has been enacted in consonance with India’s obligations under the UNCRC, which in its Article 3 stipulates that the “best interests of the child” shall be a primary consideration in all judicial proceedings. Kilkelly (2017) opines that this principle is not merely aspirational but is a “binding interpretative principle” that requires the interpretation of ambiguity in the legislation in favour of the child. The judgment of the High Court has not engaged with this framework at any point in its judgment. When the Court

granted bail to Sengar, the convict who had demonstrated a long history of abuse of authority, intimidation of the survivor, and the killing of the father of the survivor in custody, the Court has failed to keep the interests of the vulnerable child survivor at the centre of its judgment.

Questionable Basis for Sentence Suspension

Suspension of a sentence in a grave sexual offence is not a routine procedure. In the case of *Omprakash Sahni v. Jai Shankar Chaudhary*, the Supreme Court held in 2023 that the suspension of a sentence must prima facie be determined based on the assessment of whether the case put forward by the prosecution, as accepted in the trial, has a genuine prospect of acquittal on the basis of an appeal. In the case of *Jamnallal v. State of Rajasthan*, the Supreme Court held in 2025 that minor gaps in the prosecution's case would not suffice in the suspension of a sentence. However, even though the High Court's basis in the case was questionable in the application of Section 5(c), the conviction under Section 3 of the POCSO Act remained valid. Under Section 4 of the Act, as amended in 2019, the imposition of life imprisonment is provided in the case of penetrative sexual assault. However, even in the absence of the amended provision's retroactive application, the Court was bound to consider the basis upon which the sentence was imposed by the trial court in accordance with the entire Act.

Conclusion and Recommendations

Overall, what these findings indicate is that the approach of the High Court has resulted in a formalistic construction as against the protective and rights-based construction that the POCSO Act prescribes. First, the formalistic construction by the High Court of what constitutes "public servant" by relying on the IPC's definition of "public servant" and not taking into account the object and purpose of the POCSO Act is not only in violation of the principles of interpretation of statutes, it also results in a bizarre outcome whereby the powerful would not be held accountable for their actions. Second, the interpretation of "public servant" in the context of Section 21 of the IPC is itself a problem, and the court had the authority and obligation to interpret it in favor of the child survivor. Third, the imposition of a suspended sentence has not been subject to an assessment of the sustain-ability of the life sentence

provided for in Section 4 of the POCSO Act.

Three recommendations are made. First, it is recommended that courts approach the POCSO Act with a purposive and victim-centered approach in their interpretation, where the best interests of the child are used as a primary interpretive approach that prevails over, rather than is limited by, definitional uncertainties drawn from common law. Second, it is recommended that Parliament amends the POCSO Act to include a comprehensive and expansive definition of “public servant” that includes legislators who are elected and all individuals who have authority over children, in order to plug the gap that this case has created. Third, it is recommended that Indian courts take a view on the UNCRC as a substantive interpretive approach rather than a rhetorical device used to justify decisions already reached.

The child in this case has suffered not merely a heinous crime but a long period of institutional apathy, coercion, and loss. The POCSO Act was enacted to ensure that the law responds to such crimes with the full force of its protective purpose. Purposive interpretation, which is sensitive to the interests of vulnerable groups and power disparities, is a doctrine and a constitutional imperative.

References

- Bailey, D., Norbury, L., & Alan, F. (2020). *Bennion on statutory interpretation*. Butterworths.
- Belur, J., & Singh, B. B. (2015). Child sexual abuse and the law in India: a commentary. *Crime Science*, 4(1). <https://doi.org/10.1186/s40163-015-0037-2>
- Bench, B. (2020, March 13). *Unnao: Delhi Court sentences Kuldeep Singh Sengar, six others to 10 years' imprisonment for role in death of rape victim's father*. Bar and Bench - Indian Legal News. <https://www.barandbench.com/news/unnao-delhi-court-sentences-kuldeep-singh-sengar-six-others-to-10-years-imprisonment-for-role-in-death-of-rape-victims-father>
- Bhardwaj, P. (2019, August 1). Unnao rape case: All cases transferred to Delhi; Probe to be completed within maximum 14 days. SCC Online. <https://www.sconline.com/blog/post/2019/08/01/unnao-rape-case-all-cases-transferred-to-delhi-probe-to-be-completed-within-maximum-14-days/>
- Constitution of India, 1950
- Handa, R. K., & Goswami, S. (2024). The Protection of Children from Sexual Offences Act (POCSO), 2012: The Precincts of the Law and Judicial Expositions. *Journal of Victimology and Victim Justice*, 7(2), 191–204. <https://doi.org/10.1177/25166069241289287>
- Jain, D., & Shrivastava, A. (2025, December 29). Supreme Court stays Delhi HC order granting bail to Kuldeep Sengar in Unnao rape case. LiveLaw. <https://www.livelaw.in/top-stories/supreme-court-kuldeep-singh-sengar-bail-stayed-unnao-rape-case-516319>
- Jamnial v. State of Rajasthan (2025 INSC 935)
- Kuldeep Singh Sengar v. Central Bureau of Investigation (CRL.A. 53/2020, DHC)
- Kilkelly, U. (2017). *Children's Rights*. <https://doi.org/10.4324/9781315095769>
- Maity, S., & Chakraborty, P. R. (2023). Implications of the POCSO Act and determinants of child sexual abuse in India: insights at the state level. *Humanities and Social Sciences Communications*, 10(1). <https://doi.org/10.1057/s41599-022-01469-x>
- Omprakash Sahni v. Jai Shankar Chaudhary ((2023) 6 SCC 123)
- Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012)

Protection of Children from Sexual Offences (Amendment) Act, 2019 (Act No. 25 of 2019)

P. V. Narasimha Rao v. State (CBI/SPE) ((1998) 4 SCC 626)

Rajagopal, K. (2025, December 29). *Unnao rape case: Supreme Court stays suspension of sentence of Sengar*; Rajagopal, K. (2025, December 29). *Unnao rape case: Supreme Court stays suspension of sentence of Sengar, asks why MLA is not a “public servant” under POCSO Act*. The Hindu. <https://www.thehindu.com/news/national/sc-stays-unnao-rape-convict-sengars-suspension-of-life-sentence/article70448721.ece>

Sebastian, M. (2025, December 25). *Suspension Of Kuldeep Singh Sengar’s Sentence In Unnao Rape Case Is Legally Flawed & Problematic*. Livelaw.in; Live Law. <https://www.livelaw.in/articles/kuldeep-singh-sengars-sentence-suspension-in-unnao-rape-case-is-legally-flawed-514451>

Shiva Prakash Srinivasan, & Shruthi S. (2024). A Comparative Review of UNCRC and Indian Legislation from the Child Mental Health Perspective. *Indian Journal of Psychological Medicine*, 46(4). <https://doi.org/10.1177/02537176241226714>

Sucheta. (2025, December 29). *Supreme Court stays Delhi HC’s order suspending Kuldeep Sengar’s sentence in Unnao Rape Case*. SCC Times.

<https://www.sconline.com/blog/post/2025/12/29/supreme-court-stays-delhi-hcs-order-suspending-kuldeep-sengars-sentence-in-unnao-rape-case/>

The Arms Act, 1959 (Act No. 54 of 1959)

The Indian Penal Code, 1860 (Act No. 45 of 1860)

United Nations. (1989). *Convention on the Rights of the Child*. OHCHR; United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>