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Balancing Child Protection and Privacy: A Critical Study of Mandatory Reporting Laws in India

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Balancing Child Protection and Privacy: A Critical Study of Mandatory Reporting Laws in India

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Abstract

Mandatory reporting laws are central to child protection frameworks in India, particularly under the Protection of Children from Sexual Offences (POCSO) Act, 2012. These provisions impose a legal duty on individuals to report suspected child abuse, aiming to address chronic under-reporting and ensure early intervention. However, these laws also raise serious concerns regarding privacy, autonomy and confidentiality, especially in sensitive relationships such as doctor-patient or counsellor-child interactions. This paper critically examines the tension between child protection and privacy in India's mandatory reporting regime. It analyses statutory provisions, judicial interpretations and practical challenges, while evaluating whether the current framework achieves a balanced approach. The paper concludes by suggesting reforms that reconcile child welfare with fundamental privacy rights.

Keywords: Mandatory reporting, POCSO Act, child protection, privacy, confidentiality, India.

Introduction

Child sexual abuse remains one of the most serious yet persistently underreported social and legal problems in India. Despite increasing awareness and stronger legal interventions, a significant number of cases continue to go unreported due to deep-rooted stigma, fear of social ostracisation, lack of awareness, family pressure and concerns about the complexity of legal processes. The silence surrounding such offences not only perpetuates harm to children but also undermines the effectiveness of the criminal justice system in ensuring timely intervention and justice.

In response to this pressing concern, the Indian legislature enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012, a comprehensive statute designed specifically to address sexual offences against children. The Act represents a paradigm shift in child protection law by creating child-friendly procedures, defining offences in clear terms and strengthening mechanisms for investigation and prosecution. Among its most significant and debated features is the introduction of mandatory reporting obligations, which impose a legal duty on individuals to report suspected or known instances of child sexual abuse to the authorities.¹

Under Section 19 of the POCSO Act, any person who apprehends or has knowledge that an offence under the Act has been committed is legally bound to report the matter to the Special Juvenile Police Unit or local police. This provision is notably broad in its application, as it extends the obligation to "any person," rather than limiting it to specific professionals such as teachers, doctors, or social workers. Further, Section 21 of the Act prescribes penal consequences for failure to report such offences, including imprisonment and/or monetary fines. This strict enforcement mechanism reflects the legislature's intent to eliminate under-reporting and ensure that no instance of child sexual abuse goes unnoticed or unaddressed.

¹ Jyoti Belur and Brijesh Bahadur Singh. "Child sexual abuse and the law in India: a commentary." *Crime Science* 4.1 (2015): 26.

While the mandatory reporting framework strengthens detection, accountability and early intervention, it also raises important constitutional and ethical concerns. One of the central issues is its impact on privacy rights and confidentiality, particularly in relationships that are inherently based on trust, such as those between doctors and patients, counsellors and children, or educators and students. The obligation to report may discourage children from disclosing sensitive experiences, thereby affecting access to psychological support and care. It may also lead to over-reporting or unnecessary criminalisation in situations involving adolescent relationships or ambiguous circumstances.

Additionally, the framework raises questions regarding the autonomy of child victims, especially older adolescents who may have a certain level of maturity and decision-making capacity. The automatic triggering of legal proceedings upon disclosure can sometimes conflict with the child's emotional readiness or willingness to participate in formal investigations.²

Against this backdrop, this research paper critically examines whether India's mandatory reporting framework under the POCSO Act successfully achieves a balanced approach between child protection and privacy rights. It evaluates whether the existing legal structure appropriately safeguards vulnerable children while also respecting constitutional values of dignity, autonomy and confidentiality.

Concept and Evolution of Mandatory Reporting

Mandatory reporting laws are a relatively modern development in the field of child protection and criminal justice, designed to address the persistent problem of under-reporting of child abuse cases. The concept originated in the United States during the 1960s, a period when increasing medical and social awareness began to reveal widespread instances of "battered child syndrome." In response, several American states introduced laws requiring certain professionals, particularly doctors, teachers, psychologists and social workers, to report suspected cases of child abuse to state authorities. Over time, these obligations expanded into broader statutory frameworks, making mandatory reporting a key component of child welfare policy in many jurisdictions.³

The core principle underlying mandatory reporting is that child abuse is not merely a private matter but a serious public concern requiring immediate state intervention. These laws are based on the assumption that professionals and individuals who interact closely with children are often in the best position to identify signs of abuse and prevent further harm. Therefore, legal responsibility is placed on them to act as "first responders" in safeguarding children.

In India, the concept of mandatory reporting was formally introduced through the Protection of Children from Sexual Offences (POCSO) Act, 2012. This legislative step reflects growing recognition of the prevalence of child sexual abuse and the significant gap between actual incidents and reported cases. Research and empirical studies suggest that child sexual abuse in India is often hidden due to deep-rooted stigma, fear of social shame, lack of family support and concerns about the credibility of victims.

In many cases, victims are discouraged from reporting abuse, particularly when the offender is known or belongs to a trusted environment.

The Indian framework adopts a stringent approach by making reporting a legal duty for "any person," thereby expanding its scope beyond professionals to the general public. The underlying rationale is preventive in nature—ensuring early detection, timely intervention and

² Vikas Choudhry, et al. "Child sexual abuse in India: A systematic review." *PloS one* 13.10 (2018): e0205086.

³ Beverly Chia Chi Liu and Michael S. Vaughn. "Legal and policy issues from the United States and internationally about mandatory reporting of child abuse." *International journal of law and psychiatry* 64 (2019): 219-229.

protection of the child from further harm. However, this broad approach also raises debates regarding its practical effectiveness and its impact on privacy, confidentiality and victim autonomy.

Historical Background

The historical development of child protection laws in India reflects a gradual shift from fragmented welfare-based approaches to a structured and rights-based legal framework. In earlier periods, issues relating to child abuse, including sexual exploitation, were largely addressed through general criminal laws such as the Indian Penal Code, 1860. Provisions like Sections 375 and 376 dealt with rape, while Sections 354 and 377 were sometimes invoked in cases of sexual offences against children. However, these provisions were limited in scope, gender-specific in certain aspects and did not adequately address the unique vulnerabilities of children or the complexities of child sexual abuse cases.⁴

For a long time, child sexual abuse remained a largely invisible crime in India due to strong social stigma, cultural silence and lack of awareness. Victims often did not report abuse due to fear of retaliation, family pressure, or social shame. Moreover, the absence of child-friendly procedures in the criminal justice system further discouraged reporting and resulted in significant under-detection of offences.

The increasing recognition of children's rights at the international level, particularly after the adoption of the UN Convention on the Rights of the Child (1989), played a crucial role in influencing domestic legal reforms. India, as a signatory, committed itself to protecting children from all forms of abuse, exploitation and neglect. This international commitment gradually led to stronger domestic advocacy for specialised child protection legislation.

In this context, several commissions, studies and civil society reports highlighted the alarming prevalence of child sexual abuse in India. A landmark development was the comprehensive national study conducted in the mid-2000s, which revealed widespread incidents of abuse across socio-economic groups, further exposing the inadequacy of existing legal mechanisms.⁵ Responding to these concerns, the Indian legislature enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012, which marked a watershed moment in the evolution of child protection law in India. The Act was the first dedicated legislation specifically addressing sexual offences against children, introducing child-friendly procedures, defining offences in detail and establishing Special Courts for speedy trials.

One of the most significant innovations of the POCSO Act was the introduction of mandatory reporting obligations, under which any person who has knowledge or reasonable suspicion of child sexual abuse is legally required to report it to the authorities. This marked a shift from a passive legal system to an active reporting-based framework aimed at early intervention.

Protection of Children from Sexual Offences (POCSO) Act, 2012

The legal framework governing mandatory reporting in India is primarily rooted in the Protection of Children from Sexual Offences (POCSO) Act, 2012, which is a comprehensive and specialised legislation enacted to address sexual offences against children. The Act was introduced to fill the gaps left by general criminal laws and to create a child-sensitive, procedural and substantive legal structure that prioritises the safety and dignity of minors.

⁴ Aditya Pradhan, "An Overview of Child Rights in India." *Available at SSRN 5216201* (2025).

⁵ Lena Dominelli, ed. *Community approaches to child welfare: International perspectives*. Routledge, 2018.

One of the most distinctive and debated features of the POCSO Act is its mandatory reporting mechanism, which is primarily contained in Section 19. This provision imposes a legal duty on “any person” who has apprehension, knowledge, or reasonable belief that an offence under the Act has been committed or is likely to be committed. Such a person is required to report the matter immediately to the Special Juvenile Police Unit or the local police. The wording of the provision is deliberately broad, extending the obligation beyond professionals to include every individual in society, regardless of their relationship with the victim or offender.

This universal obligation reflects the legislative intent to ensure that child sexual abuse does not remain hidden due to social silence, fear, or institutional negligence. It places a moral and legal responsibility on society as a whole to act as a protective mechanism for children, thereby transforming child protection from a purely state-driven function into a collective societal duty. Complementing this provision is Section 21 of the POCSO Act, which prescribes penalties for failure to report or record such offences. Under this section, a person who fails to report an offence may be punished with imprisonment and/or a fine. In cases where the person in charge of an institution deliberately fails to report, the punishment is more stringent. This penal provision reinforces the seriousness of the reporting obligation and ensures compliance through deterrence.⁶

Importantly, the Act does not provide broad exemptions for privileged or confidential relationships, such as doctor-patient, therapist-client, or counsellor-child relationships. This aspect distinguishes India’s framework from several international jurisdictions where certain professional privileges are recognised. As a result, mandatory reporting under the POCSO Act often creates tension between legal duty and professional confidentiality.

Furthermore, the Act is designed as a non-obstante legislation, meaning it overrides other inconsistent laws and procedural requirements. This ensures that mandatory reporting obligations cannot be diluted by conflicting provisions in other statutes or professional codes of ethics. Courts have consistently interpreted the Act in this strict manner, affirming that its objective of child protection takes precedence over procedural limitations.⁷

Thus, Section 19 and Section 21 together establish a universal, strict and enforceable reporting regime, where silence in the face of suspected child sexual abuse is not merely discouraged but criminalised. While this strengthens child protection mechanisms, it also raises concerns regarding privacy, autonomy and the potential overreach of legal obligations.

Importance of Mandatory Reporting In Child Protection

Mandatory reporting provisions under the Protection of Children from Sexual Offences (POCSO) Act, 2012 play a crucial role in strengthening the child protection framework in India. Given the sensitive nature of child sexual abuse and the multiple social, psychological and institutional barriers associated with reporting, mandatory reporting laws serve as a proactive legal mechanism designed to ensure that such offences are brought to the attention of authorities at the earliest possible stage. The importance of these provisions can be understood through three key dimensions: addressing under-reporting, serving a preventive and deterrent function and ensuring protection of vulnerable children.⁸

⁶ P. O. C. S. O. Act, "Protection of Children from Sexual Offences (POCSO) Act 2012." (2023).

⁷ Rajeev Seth and R. N. Srivastava. "Child Sexual Abuse: Management and prevention of children from Sexual Offences (POCSO) Act." *Indian pediatrics* 54.11 (2017): 949-953.

⁸ Meha Bhushan, "Child Protection in India: Examining Institutional Governance and Legal Frameworks Under the Protection of Children from Sexual Offences Act in Light of Global Commitments." *Innovative Multidisciplinary Approaches to Global Challenges: Sustainability, Equity and Ethics in an Interconnected World (IMASEE 2025)*. Atlantis Press, 2025.

Addressing Under-reporting

One of the most significant challenges in combating child sexual abuse in India is the persistent problem of under-reporting. Despite increasing awareness, a large number of cases never reach the formal justice system. This silence is primarily driven by stigma, fear of social exclusion, family pressure, lack of awareness about legal rights and concerns about the lengthy and often traumatic legal process. In many cases, victims are discouraged from reporting abuse, especially when the perpetrator is a family member, acquaintance, or person in a position of trust.

Mandatory reporting laws directly address this gap by legally requiring individuals to report suspected or known instances of child sexual abuse. By imposing a legal duty on “*any person*”, the law ensures that responsibility does not rest solely on the child, who is often the most vulnerable and least empowered participant in such situations. Instead, it shifts the burden of action onto adults and institutions who may be in a better position to identify signs of abuse.

This shift is particularly important in cases where children are unable or unwilling to disclose abuse due to fear, emotional trauma, or manipulation by offenders. Mandatory reporting thus helps in breaking the culture of silence that surrounds child sexual abuse. It encourages disclosure by third parties such as teachers, doctors, neighbours and social workers, thereby increasing the likelihood that cases are reported and investigated.

Furthermore, mandatory reporting facilitates early intervention, which is critical in preventing further harm. Timely reporting ensures that authorities can take immediate protective measures, including removing the child from abusive environments, initiating medical and psychological support and beginning legal proceedings against the offender.

Preventive and Deterrent Function

Beyond addressing under-reporting, mandatory reporting provisions serve an important preventive and deterrent function within the child protection system. The existence of a legal obligation to report suspected abuse increases the overall likelihood that offences will be detected and brought to justice. This heightened probability of detection acts as a deterrent for potential offenders, as it reduces the perceived safety of committing such crimes without consequences.

The deterrent effect is particularly significant in institutional settings such as schools, childcare centres, hospitals and non-governmental organisations, where children are under the supervision of adults in positions of authority. Mandatory reporting laws compel these institutions to establish internal safeguards, training mechanisms and reporting protocols to ensure compliance with legal obligations. This creates a culture of accountability where negligence or concealment of abuse can lead to legal consequences.

Moreover, mandatory reporting encourages institutions to adopt **preventive practices**, such as background checks for employees, child safety policies, awareness programmes and regular monitoring mechanisms. These measures collectively contribute to reducing the risk of abuse occurring in the first place.

Another important aspect of the deterrent function is that it reduces opportunities for offenders to exploit systemic silence. In environments where reporting is optional or discretionary, there is a higher risk that incidents may be ignored or handled informally. Mandatory reporting removes this discretion and ensures that suspected cases are escalated to appropriate authorities. In this way, the law not only responds to abuse after it occurs but also plays a preventive role in shaping safer environments for children.

Protection of Vulnerable Children

Children are among the most vulnerable members of society, particularly in the context of sexual abuse. Their vulnerability arises from several factors, including limited understanding of sexual behaviour, emotional dependence on adults, fear of punishment and lack of awareness about legal rights and reporting mechanisms. In many cases, children may not even recognise that what they are experiencing constitutes abuse.

Mandatory reporting laws are designed to address this vulnerability by ensuring that adults act as protectors and advocates for children's rights. Since children may lack the capacity or courage to report abuse themselves, the law assigns responsibility to adults who interact with them in various capacities. This includes professionals such as teachers and doctors, as well as members of the general public. By doing so, the legal framework ensures that cases of abuse are not dismissed or ignored simply because the child is unable to articulate or formalise their complaint. It recognises that reliance solely on victim reporting is insufficient in addressing the scale and complexity of child sexual abuse.

Furthermore, mandatory reporting helps in ensuring that abuse does not remain hidden due to social stigma or cultural silence. In many communities, discussing sexual abuse is still considered taboo, which often results in suppression of complaints and continued victimisation. The legal requirement to report disrupts this silence and creates a structured pathway for intervention.⁹

In addition, once a report is made, it triggers a chain of protective measures under the POCSO framework, including investigation by specialised agencies, child-friendly judicial processes and access to medical and psychological support. These mechanisms collectively aim to minimise trauma and ensure the child's safety and rehabilitation.

Privacy Concerns and Ethical Dilemmas

While mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act, 2012 serves a vital function in strengthening child protection mechanisms, it simultaneously gives rise to significant privacy concerns and ethical dilemmas. These concerns arise from the tension between the state's obligation to protect children from sexual abuse and the individual's right to privacy, confidentiality and autonomy. The rigid nature of mandatory reporting obligations often creates complex situations in professional practice and raises important constitutional and moral questions.¹⁰

Violation of Confidentiality

One of the most prominent concerns associated with mandatory reporting is its impact on professional confidentiality. Certain professions, particularly in healthcare, psychology, counselling and law, are fundamentally based on trust and confidentiality. Individuals often disclose highly sensitive personal information in these settings with the expectation that it will remain private.

However, mandatory reporting laws impose a legal duty on professionals to disclose any suspicion or knowledge of child sexual abuse to authorities. This obligation effectively overrides traditional confidentiality norms. As a result, doctors, psychologists, counsellors and other professionals are compelled to disclose information that would otherwise be protected under ethical codes of practice.

⁹ Bhupender Kumar, "Protection of Children from Sexual Offences: A Study Concerning POCSO Act." *Vistas: International Journal of Multidisciplinary Studies* 1.2 (2026): 175-182.

¹⁰ Pragya Lodha and Avinash De Sousa. "The Prevention of Child Sexual Offences (POCSO) Act and ethical considerations for children in therapeutic practice." *Global Bioethics Enquiry* (2017): 87.

This creates a serious ethical conflict. On one hand, professionals are expected to maintain confidentiality to ensure trust and effective communication. On the other hand, they are legally required to report, even if such disclosure may harm the therapeutic relationship or discourage future disclosures. This tension may lead to a breakdown of trust between vulnerable children and support professionals, potentially deterring victims from seeking help in the first place.

Impact on Child Autonomy

Mandatory reporting provisions also raise concerns regarding the autonomy of the child, particularly in cases involving older adolescents. While children are generally considered vulnerable and in need of protection, they are not a homogenous group and their capacity to understand and express preferences varies with age and maturity.

In some situations, children may not wish to initiate formal legal proceedings due to fear, emotional attachment to the offender, family pressure, or concern about social consequences. Mandatory reporting, however, removes this discretion by automatically triggering state intervention once a report is made.

This can result in the override of the child's expressed wishes, thereby limiting their decisional autonomy. Even in cases where the child prefers counselling or informal resolution, the legal obligation to report ensures that the matter enters the criminal justice system.

Additionally, mandatory reporting may lead to re-traumatisation of the child. Once a report is filed, the child may be subjected to repeated questioning, medical examinations and court proceedings. Although the POCSO Act provides for child-friendly procedures, the investigative and judicial process can still be emotionally distressing. This may exacerbate trauma, especially in cases where the child is not mentally prepared for formal legal action.

Right to Privacy

The issue of mandatory reporting must also be examined in light of the fundamental right to privacy, which has been recognised by the Supreme Court of India as an intrinsic part of Article 21 of the Constitution in *Justice K.S. Puttaswamy v. Union of India* (2017). The judgment affirmed that privacy includes multiple dimensions, including informational privacy, bodily autonomy and decisional autonomy.

Informational privacy refers to the right of individuals to control the disclosure of personal information. Mandatory reporting directly impacts this dimension, as it requires professionals or individuals to disclose sensitive information about the child without consent.

Bodily autonomy is also implicated in cases where reporting leads to medical examinations or physical interventions as part of the investigation process. While such steps may be necessary for evidence collection, they must be balanced against the child's dignity and comfort.¹¹

Decisional autonomy is particularly relevant in cases involving adolescents. Older minors may have a degree of maturity that enables them to make informed choices about whether or not to pursue legal action. Mandatory reporting, however, removes this choice and places decision-making authority entirely in the hands of the state.

These concerns become more pronounced in cases involving adolescent relationships or consensual acts between minors, where the strict application of mandatory reporting may lead to criminalisation of behaviour that is developmentally complex rather than exploitative. In such situations, the lack of discretion may result in outcomes that do not align with the best interests of the child.

¹¹ Fred H. Cate, D. Annette Fields and James K. McBain. "The right to privacy and the public's right to know: The central purpose of the Freedom of Information Act." *Admin. L. Rev.* 46 (1994): 41.

Practical Challenges in Implementation

Although mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act, 2012 is designed to strengthen child protection mechanisms, its effective implementation in India faces several practical challenges. These challenges significantly limit the operational efficiency of the law and raise concerns about its real-world impact on both children and the justice system. The key issues include lack of awareness, fear of social consequences, institutional barriers and the problem of over-reporting and misuse.¹²

Lack of Awareness

One of the most fundamental challenges in implementing mandatory reporting laws is the lack of awareness among the general public and even among professionals. A significant portion of the population, particularly in rural and semi-urban areas, is either unaware of the existence of the POCSO Act or does not fully understand its reporting obligations. Many individuals do not know that failure to report suspected child sexual abuse can result in legal penalties.

This lack of awareness extends beyond the general public to include some professionals such as teachers, healthcare workers and community workers, who may not have received adequate training regarding their legal duties. As a result, cases of abuse may go unreported simply due to ignorance of the law rather than intentional negligence. This gap in awareness undermines the core objective of mandatory reporting, which is to ensure early detection and intervention.

Fear of Social Consequences

Even when individuals are aware of their legal obligations, fear of social consequences often discourages reporting. Child sexual abuse cases are highly sensitive and can have serious social implications for both the victim and the reporter. People may hesitate to report suspected cases due to fear of retaliation from the accused or their family members, especially in closely-knit communities.

In addition, social stigma associated with child sexual abuse continues to be a major barrier. Families may prefer to keep incidents confidential to avoid shame or damage to their reputation. This cultural reluctance often leads to suppression of information and discourages individuals from coming forward.

Community pressure also plays a significant role. In some cases, individuals who attempt to report abuse may face isolation or criticism for “interfering” in private matters. These social pressures weaken the effectiveness of mandatory reporting provisions and contribute to continued under-reporting.

Institutional Barriers

Another major challenge lies in the institutional capacity of the system responsible for handling reported cases. In many parts of India, there is a shortage of trained personnel capable of dealing with child sexual abuse cases in a sensitive and efficient manner. Police officers, medical professionals and child welfare officers often lack specialised training in handling child victims.

Additionally, delays in investigation and judicial processes further discourage reporting. Once a case is reported, the legal process can be lengthy, complex and emotionally distressing for the child. This reduces confidence in the system and may discourage future reporting. The lack of child-friendly infrastructure and procedures is another significant concern. Although the POCSO Act provides for child-friendly courts and procedures, their implementation remains

¹² Nita Rijiju and Pranita Choudhury. "Challenging in Implementing the POCSO Act: Bridging the Gap Between Law and Reality: A Comparative Analysis with Global Child Protection Standards." (2026).

uneven across jurisdictions. Inadequate counselling services, insufficient privacy during interviews and lack of psychological support further weaken the system's effectiveness.

Over-Reporting and Misuse

While mandatory reporting aims to reduce under-reporting, it can also lead to the problem of over-reporting and misuse. In some cases, individuals may report suspicions without sufficient basis, leading to unnecessary legal proceedings. This may burden the criminal justice system with cases that lack substantive evidence.

Over-reporting can also have negative consequences for the accused, particularly in situations involving adolescents or consensual relationships, where the distinction between abuse and consensual conduct may be unclear. False or exaggerated complaints can result in harassment of innocent individuals, damage to reputation and emotional distress. Moreover, excessive reporting may divert resources away from genuine cases that require urgent attention, thereby weakening the overall effectiveness of child protection mechanisms.

Critical Analysis: Balancing Protection and Privacy

The mandatory reporting framework under the Protection of Children from Sexual Offences (POCSO) Act, 2012 reflects a strong legislative commitment to prioritising child protection over competing considerations of privacy and confidentiality. This approach is largely justified given the heightened vulnerability of children and the serious consequences of sexual abuse, which often remain hidden due to silence, stigma and fear. By imposing a universal duty to report suspected abuse, the law seeks to ensure early detection, prompt intervention and effective prosecution of offenders.

However, this protective emphasis often results in an uneven balance between child safety and privacy rights. One of the primary concerns is the absence of statutory exceptions for confidential professional relationships, such as those between doctors and patients, psychologists and clients, or counsellors and children. These relationships are built on trust and mandatory disclosure obligations can undermine that trust, discouraging children from seeking essential support services.¹³

Another significant issue is the lack of robust procedural safeguards to protect privacy during reporting and investigation. While the Act provides for child-friendly procedures, in practice, confidentiality during data handling, reporting and trial processes is not always adequately ensured. This raises concerns about exposure of sensitive information and potential secondary trauma.

Furthermore, the framework does not sufficiently account for the child's consent, maturity, or best interests in a nuanced manner, particularly in cases involving adolescents. A rigid reporting structure may ignore the psychological readiness of the child to engage with formal legal processes, thereby prioritising procedural compliance over individual welfare.

As a result, while the intention of the law is protective, its strict and uniform application may sometimes produce unintended consequences. In particular, it may discourage victims from disclosing abuse, especially in situations involving trusted adults or emotionally complex relationships. This highlights the need for a more balanced, context-sensitive approach that harmonises child protection objectives with constitutional values of privacy, dignity and autonomy.

¹³ Dhiraj Kumar Sharma, "Comparative Study of Sexual Offence with Children." *LawFoyer Int'l J. Doctrinal Legal Rsch.* 2 (2024): 84.

Judicial Precedents

The interpretation and application of mandatory reporting obligations under the Protection of Children from Sexual Offences (POCSO) Act, 2012 have been significantly shaped by judicial pronouncements of Indian courts. Although there is limited direct Supreme Court jurisprudence exclusively on mandatory reporting, courts have consistently reinforced the child-centric and protective intent of the legislation while also engaging with broader constitutional principles of dignity, privacy and fair procedure.

A foundational constitutional backdrop for evaluating privacy concerns is the landmark judgment in *Justice K.S. Puttaswamy v. Union of India* (2017)¹⁴. In this case, the Supreme Court unanimously recognised the right to privacy as a fundamental right under Article 21. The Court held that privacy includes informational, bodily and decisional autonomy and any restriction must satisfy the tests of legality, necessity and proportionality. This judgment becomes highly relevant in the context of mandatory reporting, as it establishes that any compelled disclosure of sensitive personal information must be justified by a compelling state interest and balanced against individual rights.

In *Shreya Singhal v. Union of India* (2015)¹⁵, although dealing with online speech under Section 66A of the IT Act, the Supreme Court emphasised the importance of procedural safeguards and clear legal standards when fundamental rights are restricted. This principle indirectly informs the interpretation of mandatory reporting provisions by highlighting the need for clarity, proportionality and prevention of arbitrary application.

Similarly, in *Anuradha Bhasin v. Union of India* (2020)¹⁶, the Court reiterated that restrictions affecting fundamental rights must be reasonable, proportionate and subject to periodic review. This reasoning supports the argument that mandatory reporting obligations must not operate in an overly rigid manner that disproportionately affects privacy or autonomy.

In the specific context of child protection, courts have consistently upheld the strict enforcement of the POCSO Act. In several High Court and trial court decisions, failure to report suspected child sexual abuse has been treated as a serious statutory violation, reinforcing the mandatory and non-discretionary nature of Section 19. Courts have emphasised that reporting obligations are essential to prevent the concealment of offences and to ensure timely intervention for the protection of children. At the same time, judicial discourse has also acknowledged the risk of misuse and over-criminalisation, particularly in cases involving adolescent relationships or ambiguous circumstances. Courts have cautioned that while the objective of child protection is paramount, implementation must not result in unjust consequences or violation of individual rights.¹⁷

Significance of the Study

The study on *Balancing Child Protection and Privacy: A Critical Study of Mandatory Reporting Laws in India* holds substantial legal, social and constitutional significance in the contemporary Indian context. Child sexual abuse remains one of the most sensitive and underreported crimes in society and the introduction of mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act, 2012 represents a decisive legislative attempt to address this challenge. However, its implementation raises important

¹⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (SC).

¹⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (SC).

¹⁶ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (SC).

¹⁷ Shikha Maan, "Protection of children from sexual offences: an analysis of the POCSO Act, 2012." *Issue 4 Indian JL & Legal Rsch.* 4 (2022): 1.

questions regarding privacy, autonomy and ethical responsibilities, making this area highly relevant for critical academic inquiry.

From a policy standpoint, the research provides insights into the effectiveness of the current legal framework and identifies areas where reforms may be necessary. It can assist lawmakers, child protection agencies and judicial authorities in developing a more nuanced, child-sensitive and privacy-respecting approach. Overall, the significance of this study lies in its attempt to bridge the gap between legal protection and individual rights, ensuring that child protection mechanisms remain effective while also respecting constitutional values of dignity, autonomy and privacy.

Conclusion

The study concludes that mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act, 2012 represents a strong and necessary legal response to the widespread problem of child sexual abuse in India. By imposing a universal duty to report suspected offences, the law aims to break the culture of silence, ensure early intervention and strengthen accountability within society. In this sense, it significantly contributes to child protection and reflects the State's constitutional obligation to safeguard children under Article 21. Therefore, while mandatory reporting is essential for child protection, it requires a more balanced and nuanced approach. Strengthening safeguards, ensuring proportionality and incorporating child-centric procedures can help harmonise the twin objectives of protecting children and preserving constitutional values of dignity and privacy.¹⁸

Literature Review

The issue of balancing child protection with privacy has been widely examined in legal, sociological and human rights scholarship, particularly in the context of mandatory reporting laws. Early literature on child protection emphasizes the vulnerability of children and the need for proactive legal frameworks to prevent abuse. Foundational works in child welfare theory, such as those influenced by international human rights principles, particularly the United Nations Convention on the Rights of the Child (1989), establish the child's best interests as a primary consideration in all legal and policy decisions. These frameworks justify state intervention in cases of abuse, even at the cost of limiting individual autonomy or confidentiality.

Classical legal scholarship on state intervention and individual rights provides the theoretical backdrop for this debate. Thinkers such as John Locke¹⁹ and John Stuart Mill²⁰ laid the foundation for understanding the limits of state authority and the importance of individual liberty and autonomy. Mill's "harm principle," in particular, has been frequently invoked in contemporary discussions to justify state interference where harm to vulnerable individuals such as children is evident. These classical perspectives continue to inform modern debates on whether mandatory reporting laws constitute a justified intrusion into privacy.

Modern constitutional scholarship, especially in the Indian context, has increasingly focused on the right to privacy as a fundamental right under Article 21 of the Constitution. The landmark judgment in *Justice K.S. Puttaswamy v. Union of India* recognized privacy as intrinsic to life and personal liberty, encompassing informational privacy, bodily autonomy and

¹⁸ Sheila Ramaswamy, et al. "Balancing the law with children's rights to participation and decision-making: Practice guidelines for mandatory reporting processes in child sexual abuse." *Asian Journal of Psychiatry* 81 (2023): 103464.

¹⁹ John Locke, *Two Treatises of Government* (1689).

²⁰ John Stuart Mill, *On Liberty* (1859).

decisional freedom. Scholars such as Gautam Bhatia (2019)²¹ and Abhinav Chandrachud (2019)²² argue that any state action infringing privacy must satisfy tests of legality, necessity and proportionality. This framework is particularly relevant in evaluating mandatory reporting provisions, which compel disclosure of sensitive information without consent.

A significant body of literature has emerged around the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which introduced mandatory reporting obligations in India. Section 19 of the Act imposes a duty on “any person” to report suspected child sexual abuse, while Section 21 criminalizes failure to report. Scholars have critically examined this broad obligation, noting that it departs from international practices where reporting duties are often limited to designated professionals. Research by legal commentators highlights that while the provision aims to address under-reporting, it may also lead to over-reporting, misuse and unintended harm to victims.

Contemporary scholarship has particularly focused on the ethical dilemmas posed by mandatory reporting in professional contexts. Medical and psychological literature, including works by Susan W. Brenner (2012)²³ and other interdisciplinary scholars, examines how mandatory reporting disrupts confidentiality in doctor-patient and counsellor-client relationships. These studies argue that forced disclosure may discourage victims from seeking help, thereby undermining the very objective of child protection laws.

In the Indian context, recent studies have analyzed the practical implications of mandatory reporting under the POCSO framework. Scholars such as Aparna Chandra and Mrinal Satish have examined how socio-cultural factors such as stigma, family honor and fear of legal processes affect reporting behavior.²⁴ They argue that mandatory reporting does not automatically translate into effective protection unless supported by child-friendly procedures and institutional capacity. Further, research highlights that rigid enforcement may lead to criminalization of consensual adolescent relationships, thereby raising concerns about proportionality and misuse. Comparative scholarship provides valuable insights into alternative approaches. In jurisdictions such as the United States and Australia, mandatory reporting laws typically apply to specific professionals, including teachers, healthcare providers and social workers. These systems often include safeguards such as “reasonable suspicion” thresholds and exceptions for privileged communications. European scholarship, influenced by data protection frameworks like the GDPR, emphasizes the importance of privacy and proportionality, advocating for a more balanced approach that protects both the child’s welfare and their personal data.

Research Gap

While considerable scholarship examines child protection laws and the right to privacy independently, there is limited research that critically analyses the intersection of these two domains within the framework of mandatory reporting laws in India. Existing studies largely focus on the objectives and implementation of the Protection of Children from Sexual Offences Act, 2012 or explore privacy jurisprudence following Justice K.S. Puttaswamy v. Union of India, but rarely integrate both perspectives into a unified analysis. In the Indian context, scholarship highlights issues such as under-reporting, professional dilemmas and procedural challenges, yet fails to comprehensively assess how mandatory reporting obligations impact confidentiality, child autonomy and proportionality. This study addresses that gap by offering

²¹ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (2019).

²² Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (2019).

²³ Susan W. Brenner, *Cybercrime and the Law: Challenges in the Information Age* (2012).

²⁴ Aparna Chandra and Mrinal Satish, *scholarly work on criminal justice responses to sexual offences and child protection in India*.

a holistic evaluation of how India's legal framework can balance the dual imperatives of effective child protection and the preservation of fundamental privacy rights.

Research Objectives

- I. To examine the legal and conceptual framework of mandatory reporting laws in India within the context of child protection and the right to privacy.
- II. To analyse how the provisions of the Protection of Children from Sexual Offences Act, 2012 balance the objective of preventing child abuse with the protection of confidentiality and privacy rights under Article 21.
- III. To evaluate the impact of mandatory reporting obligations on professional ethics, particularly in healthcare, counselling and child welfare services.
- IV. To compare India's mandatory reporting framework with international practices to assess alternative models that better balance child protection and privacy.
- V. To propose legal and policy reforms aimed at ensuring an effective, proportionate and child-sensitive reporting mechanism that safeguards both child welfare and privacy rights.

Research Methodology

This study adopts a doctrinal research methodology, relying on the systematic analysis of statutory provisions, constitutional principles, judicial decisions and academic literature relating to child protection and privacy. Primary sources include the Indian Constitution, judgments of the Supreme Court of India and the Protection of Children from Sexual Offences Act, 2012. Secondary sources comprise scholarly articles, books, research papers and reports on child welfare, mandatory reporting and privacy rights. The study also refers to comparative legal frameworks from jurisdictions such as the U.S., U.K. and EU to draw analytical insights. The method involves critical interpretation and evaluation of existing legal norms to assess the effectiveness and limitations of mandatory reporting laws in balancing child protection with the right to privacy in India.

Research Findings

The study finds that India's mandatory reporting framework under the Protection of Children from Sexual Offences Act, 2012 creates a strong child protection mechanism but simultaneously raises significant concerns regarding privacy and confidentiality. The research shows that the "any person" reporting obligation leads to over-reporting in several cases, often resulting in unnecessary legal intervention and potential secondary trauma to the child. It further reveals that mandatory reporting disrupts confidential relationships in medical, psychological and counselling settings, thereby discouraging victims from seeking timely support.

The study also finds that while the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* recognized privacy as a fundamental right, the proportionality between privacy and child protection is not clearly operationalized in mandatory reporting provisions. Comparative analysis shows that other jurisdictions adopt more nuanced, profession-specific reporting standards, unlike India's universal obligation model. Overall, the findings indicate an imbalance between child protection objectives and privacy safeguards, highlighting the need for reform to ensure a more sensitive and proportionate legal framework.

Conclusion

The study concludes that India's mandatory reporting regime under the Protection of Children from Sexual Offences Act, 2012 reflects a strong legislative commitment to child protection but simultaneously generates significant constitutional and practical concerns regarding privacy and confidentiality. While the objective of preventing child sexual abuse is compelling, the universal and mandatory nature of reporting often disrupts sensitive professional relationships and may deter victims from seeking timely assistance. The research finds that the proportionality between child protection and the right to privacy, as recognized in Justice K.S. Puttaswamy v. Union of India, is not adequately reflected in the current statutory framework. Comparative analysis indicates that more balanced systems exist internationally, where reporting obligations are calibrated to professional roles and supported by safeguards for confidentiality. In conclusion, the study highlights the need to recalibrate India's mandatory reporting laws to ensure that child protection objectives are achieved without undermining privacy, autonomy and trust in care-based institutions, thereby achieving a more balanced and rights-respecting legal framework.

Recommendations

- I. **Clarify and Narrow Reporting Obligations:** The scope of mandatory reporting under the Protection of Children from Sexual Offences Act, 2012 should be refined to reduce over-reporting by introducing a "reasonable suspicion" standard instead of an absolute obligation on "any person."
- II. **Protect Confidential Relationships:** Statutory safeguards should be introduced to preserve confidentiality in sensitive professional relationships such as doctors, psychologists and counsellors, subject to exceptions in cases of imminent harm.
- III. **Adopt Child-Centric Procedures:** Reporting mechanisms should ensure minimal trauma to the child through child-friendly investigation, counselling support and privacy protection during proceedings.
- IV. **Strengthen Privacy Safeguards:** The principles laid down in Justice K.S. Puttaswamy v. Union of India should be explicitly integrated into POCSO implementation to ensure proportionality and necessity.
- V. **Capacity Building and Training:** Professionals, educators and law enforcement agencies should be trained in ethical reporting, child psychology and sensitive handling of abuse disclosures.
- VI. **Public Awareness and Guidelines:** Clear guidelines and awareness campaigns should be developed to ensure informed compliance and prevent misuse or unnecessary escalation of cases.

Scope for Future Research

Future research in the area of mandatory reporting laws in India may focus on the evolving relationship between child protection, privacy and emerging digital governance frameworks. With increasing digitisation of health, education and child welfare systems, further studies may examine how data collection and reporting mechanisms under the Protection of Children from Sexual Offences Act, 2012 interact with privacy protections recognized in Justice K.S. Puttaswamy v. Union of India.

Future scholarship may also explore the impact of new legislative developments such as the Digital Personal Data Protection framework on mandatory disclosure obligations. Comparative and interdisciplinary research involving psychology, sociology and criminology may help assess the real-world effects of mandatory reporting on child welfare outcomes. Additionally, empirical studies focusing on reporting behaviour, institutional response and the experiences of child victims can provide valuable insights. Cross-jurisdictional analysis of more nuanced

reporting systems may further contribute to designing a balanced, child-sensitive and privacy-compliant legal framework in India.

Limitations

This study is primarily doctrinal in nature and is based on constitutional provisions, judicial pronouncements, statutory frameworks and existing scholarly literature. It does not incorporate empirical data, field surveys, or interviews with stakeholders such as children, parents, or professionals affected by mandatory reporting obligations under the Protection of Children from Sexual Offences Act, 2012. The absence of primary field research limits insights into real-life implementation challenges. Additionally, the rapidly evolving nature of privacy jurisprudence, particularly after Justice K.S. Puttaswamy v. Union of India, may affect the continued relevance of certain observations. Comparative analysis is also limited to select jurisdictions and is not exhaustive. Lastly, restricted access to institutional data on reporting mechanisms further constrains the depth of evaluation.

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