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# **AN EXPLORATORY STUDY OF BAIL GRANTED IN POCSO CASES AT THE SUPREME COURT OF INDIA**

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## **ABSTRACT**

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was framed to offer a strong legal protection to children against sexual harm. Although the law fortifies child protection laws, its provisions, including Section 29 that establishes a presumption of fault against the accused, bring about an intricate tension with the constitutional right to personal liberty under Article 21. This paper conducts an exploratory analysis of the grant and rejection of bail by the Supreme Court of India in POCSO cases.

The research issue is determining if the judicial interpretation of Section 29 is consistent with constitutional commitments and established bail principles. The key goal is charting bail determination factors, examining statutory presumptions as harmonised against the presumption of innocence, and determining if the Court's jurisprudence provides a consistent standard.

Methodologically, the current study follows a doctrinal approach by relying on statutory interpretation, constitutional provisions, and case law analysis of decisions of the Supreme Court reported from authentic sources (Manupatra and SCC). The case law analysis is complemented by secondary literature, including academic commentary and reports of the Law Commission.

The judgments confirm that while the Court recognises the legislative intention of Section 29, it has steered clear of an absolute reading, frequently releasing on bail where excessive pre-trial incarceration, poor prosecution evidence, or delayed trials jeopardise the rights of the accused. However, while serious offences against children are involved, the assumption has shifted the scales towards refusing bail. That dual approach betrays a pragmatic compromise between protection of the victim and constitutional freedom.

The writer concludes that while Supreme Court jurisprudence has tried its best to harmonize

statutory presumptions with fundamental rights, lack of consistency creates confusion. Fast-tracking of trials and legislative intervention could yield more consistent POCSO cases.

### **RESEARCH PROBLEM**

The research is about the grant or denial of bail by the Supreme Court in the context of the POCSO Act and how the Court engages with the burden of proving guilt established by Section 29 of the Act. Although the POCSO Act was enacted to protect children from sexual offences, as a part of this legislative agenda, the statutory presumption of guilt means that the defined statutory approach has reversed the ordinary burden of proof in criminal cases by stating that the accused is presumed guilty except for where the accused has produced evidence to rebut the guilt determined by the basic facts. A presumption of guilt, which is inherently at odds with Article 21 of the Constitution of India, raises important legal and procedural issues for the Court to grapple with in bail requests.

To address this issue, the Research Problem presents itself in two parts: First, analyzing how the Supreme Court addresses requesting bail in POCSO cases; second, exploring the judicial interpretation and practical application of Section 29 at bail hearings and whether the presumption of guilt impacts the fairness of judicial process or the constitutional safeguard in Article 21 of the Constitution of India, the right to personal liberty.

### **RESEARCH QUESTIONS**

1. What are the key procedural and legal factors considered by the Supreme Court while granting or denying bail in POCSO cases?
2. How has the Supreme Court interpreted the statutory presumption of guilt under Section 29 of the POCSO Act in bail proceedings?

### **RESEARCH METHODOLOGY**

The research uses a doctrinal (legal) research methodology to undertake an analysis of the statutes, case law and secondary sources such as commentaries and journal articles. The study employs several methods:

1. Data Collection

Primary sources: Judgments from Supreme Court bail cases under POCSO, in particular Supreme Court bail decisions which referenced Section 29; statutory provisions from POCSO Act, 2012 and the Code of Criminal Procedure, 1973.

Secondary sources: Legal commentaries, academic articles, law journal articles and other authoritative texts on bail jurisprudence and child protection law in India.

## 2. Sampling Design

Judgment Selection: A purposive sample of important Supreme Court cases decided from 2010–2025 were chosen to assess trends regarding bail decision-making under POCSO.

Inclusion Criteria: Cases included based on the articulation of discussions on bail and judicial reasoning. The analysis was restricted to cases if they were related to (i) bail, (ii) statutory interpretation of Section 29, and (iii) if they relate to procedural and constitutional aspects of pretrial detention.

## 3. Data Analysis

Doctrinal analysis: Qualitative analysis of the case law framework to identify legal principles, themes, and reasoning applied by the Supreme Courts in bail decision-making.

Comparative analysis: To the analysis where appropriate, comparisons with other legislation with similar serious natures (e.g. NDPS Act; UAPA) to align and contextualize judicial decision-making on bail.

Synthesis: Amalgamation of statutory provisions, judicial reasoning and commentary from legal scholars to draw conclusions on how Section 29 is operationalised in the bail process.

# 1. CONCEPTUAL AND HISTORICAL BACKGROUND

## 1.1. Development of Bail Jurisprudence in India

The bail jurisprudence of India has traditionally been governed by the constitutional safeguard of personal liberty by Article 21 of the Constitution of India. Sections 437–439 of the Code of Criminal Procedure, 1973 (CrPC) contain the broad outlines of bail nicely weighing the accused's right of liberty against the public's interests in the administration of justice.

Supreme Court in *State of Rajasthan v. Balchand* (1977)<sup>1</sup>, famously enshrined the maxim of "bail, not jail," stating that deprivation of liberty shall be an exception and not the norm. Such constitutional approach forms the backdrop against which the subsequent Special Acts like the

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<sup>1</sup> *State of Rajasthan v. Balchand* (1977), MANU/SC/0115/1977.

POCSO Act operate.

### 1.2. Special Criminal Legislations Bail

Parliament also introduced rigorous laws such as the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and the Unlawful Activities (Prevention) Act, 1967 (UAPA), which contained reverse burden sections and denied bail provisions. Section 37 of the NDPS Act<sup>2</sup>, for instance, demands that courts be satisfied that the accused is not guilty prior to bail being granted, creating an onerous bar.

POCSO Act proceeds alike by invoking a statutory presumption under Section 29 that flips the evidentiary burden at the bail stage. That departure from established bail principles has created considerable jurisprudential controversy<sup>3</sup>.

### 1.3. Need for Special Protection of Children

Kids are exceptionally susceptible to being exploited sexually, which calls for stronger legal interventions. J. Verma Committee Report (2013) noted that child sexual abuse wasn't adequately addressed by the Indian Penal Code alone, prompting the passing of POCSO.<sup>4</sup> Though protection of the child is always of paramount consideration, courts also have a corresponding mandate of upholding the constitutional liberties of the accused. This two-pronged requirement forms the overarching tension that characterizes the present study.

## 2. STATUTORY FRAMEWORK

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

The Act was created as a means to fully illegalise sexual offenses and protect children. Under the Act, children aged 18 and younger<sup>5</sup> Sexual offences involving penetrative and non-penetrative assault, sexual harassment, and pornography were fully defined. Harsh sentences were assigned to each<sup>6</sup>.

For purposes of bail, the most important provisions are 29 and 30:

- **Section 29:** The accused shall be presumed to have committed the offence, unless proven otherwise.
- **Section 30:** The mental state of the accused is presumed to be culpable, and it shall be

<sup>2</sup> Section 37, Narcotic Drugs and Psychotropic Substances Act, 1985.

<sup>3</sup> Section 29, Protection of Children from Sexual Offences Act, 2012.

<sup>4</sup> *Report of the Committee on Amendments to Criminal Law*, Justice J.S. Verma Committee, January 23, 2013.

<sup>5</sup> § 2(d), Protection of Children from Sexual Offences Act, 2012.

<sup>6</sup> §§ 3–12, Chs. II–III, Protection of Children from Sexual Offences Act, 2012.

the burden of the accused to prove the opposite.

## 2.2. Interrelation with the CrPC

Although POCSO is a special statute, bail applications are filed under Sections 437-439 CrPC.

<sup>7</sup> However, unlike ordinary cases, the presumption under Section 29 fundamentally alters the judicial approach. Courts are no longer considering bail in a vacuum but must weigh the reverse presumption against the presumption of innocence.

## 2.3. Constitutional Perspective

The substantive presumption must be balanced with the following constitutional guarantees:

- Article 14: The law gives no person arbitrary bail discrimination.<sup>8</sup>
- Article 21: No person shall be held in pre-trial detention unconstitutionally. The right to life and personal liberty sustains.<sup>9</sup>

Thus, while POCSO strengthens victim protection, the Supreme Court has repeatedly emphasized that statutory presumptions cannot entirely eclipse fundamental rights.<sup>10</sup>

## 2.4. Comparative Analysis with Other Special Statutes

- NDPS Act, Section 37 – strict conditions for bail.<sup>11</sup>
- UAPA, Section 43D(5) – bar on bail unless prima facie innocence shown.<sup>12</sup>
- POCSO's Section 29 is less explicit but judicially operates similarly.

The statutory framework, therefore, situates bail under POCSO within a restrictive regime, though tempered by constitutional safeguards.

## 3. SUPREME COURT'S JUDICIAL APPROACH OF GRANTING AND DENYING BAIL BY APPLYING THE POCSO ACT

### 3.1. General Principles Reconfirmed by India's Apex Court

Even by such special laws, the Supreme Court has continuously reaffirmed that the overriding general principle of bail is at all times "bail is the rule, jail the exception." In State of Rajasthan

<sup>7</sup> §§ 437–439, Code of Criminal Procedure, 1973.

<sup>8</sup> *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

<sup>9</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>10</sup> *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1

<sup>11</sup> § 37, Narcotic Drugs and Psychotropic Substances Act, 1985 and *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798

<sup>12</sup> § 43D(5), Unlawful Activities (Prevention) Act, 1967.

v. Balchand (1977)<sup>13</sup>, the Court ruled that denial of bail shall always be proportionate with overriding situations such as threat of absconding or tampering of evidence.

This doctrine was reaffirmed in Gudikanti Narasimhulu v. Public Prosecutor (1978),<sup>14</sup> wherein Justice Krishna Iyer emphasized that bail has to strike a balance between individual freedom and the interest of society. These foundational principles also govern the judicial mindset even in cases of bail under POCSO.

### 3.2. Section 29 (Presumption of Guilt): Interpretation

Most controversial of the POCSO Act's provisions is Section 29, whereby there will be a presumption of guilt if the essential facts are proved by the prosecution. The highest court has made it abundantly clear that such a presumption doesn't make bail impossible but obliges courts to exercise caution.

In State of Bihar v. Rajballav Prasad (2017), MANU/SC/0017/2017,<sup>15</sup> the accused was a legislator who had been charged with committing rape upon a minor. The Court set aside bail that had been granted by the Patna High Court, reasoning that for serious cases of POCSO offences, Section 29 presumption runs strongly against the accused. It made the point that influential accused tend to intimidate witnesses and bail will therefore have to be refused for the protection of the trial proceedings.

Likewise, in Union of India v. X (2020)<sup>16</sup>, the court analyzed if Section 29 presumption is an automatic bar against bail. The court construed that the presumption is at the stage of trial but its existence does need to be taken note of by courts even at the bail stage. Hence, although not an automatic bar, it puts an additional strain on the accused at bail.

### 3.3. Influencing Factors of Bail Orders for POCSO Offences

It has signalled a handful of key factors:

(a) *Gravity of the Allegation*

In State of Madhya Pradesh v. Madan Lal (2015),<sup>17</sup> the court refused bail when the charges included aggravated penetrative sexual assault. It ruled that criminal cases against minors deserved harsh treatment and that bail therein is against legislative intention.

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<sup>13</sup> State of Rajasthan v. Balchand (1977), MANU/SC/0115/1977.

<sup>14</sup> Gudikanti Narasimhulu v. Public Prosecutor (1978), MANU/SC/0122/1977

<sup>15</sup> State of Bihar v. Rajballav Prasad (2017), MANU/SC/0017/2017

<sup>16</sup> Union of India v. X (2020), 3 SCC 1, MANU/SC/0044/2020.

<sup>17</sup> State of Madhya Pradesh v. Madan Lal (2015) 7 SCC 681, MANU/SC/0917/2015.

(b) Age and Consent of the Victim

In *Independent Thought v. Union of India* (2017),<sup>18</sup> while not at all a bail case, the Court made abundantly clear that consent is of no consequence if the victim is below the age of 18 years. In bail cases thus the Court has time and again spurned the argument of "consensual" relationship if the prosecutrix is a minor, as held in *Satish Ragde v. State of Maharashtra*.<sup>19</sup>

(c) Delay of Trial / Excessive Incarceration

In *Hussain v. Union of India* (2017),<sup>20</sup> the court also emphasized that the prompt trial is a constitutional right. In several POCSO cases, the Supreme Court has also released on bail when the accused had already undergone multiple years of incarceration without any conclusion of the trial. Illustration: *Ankush Maruti Shinde v. State of Maharashtra* (2019).<sup>21</sup>

(d) Health and Age of the Accused

In *P. Rajagopal v. State of Tamil Nadu* (2019)<sup>22</sup>, bail was examined on the basis of illness. Although the case related to conviction with IPC, the court applied the principle to hold that grave illness could potentially be a basis for bail even from strict laws such as POCSO.

(e) Tampering Evidence

In *Rajballav Prasad* (supra), bail was denied on the basis of the danger of intimidating witnesses. SC has emphasised that while dealing with child victims, protection of witnesses is of first preference.

Judicial Trend that can be noted here is Balancing Presumption and Liberty. The jurisprudence demonstrates a two-fold approach:

Firstly, the denial of bail strictly in serious cases: In cases concerning aggravated penetrative assault, custodial intimidation, or vulnerable victims, SC has tended towards refusal relying on legislative intent as also Section 29 presumption.

Secondly, the grant of bail on the ground of trial delay, frail evidence, or mitigating circumstances: When continued detention will be repugnant to Article 21, SC has allowed bail irrespective of Section 29. This is an effort at harmonising statutory presumption with constitutional protection.

<sup>18</sup> *Independent Thought v. Union of India* (2017), 10 SCC 800, MANU/SC/1223/2017.

<sup>19</sup> *Satish Ragde v. State of Maharashtra*, (2021) 2 SCC 783, MANU/SC/0095/2021.

<sup>20</sup> *Hussain v. Union of India* (2017), 5 SCC 702, MANU/SC/0400/2017.

<sup>21</sup> *Ankush Maruti Shinde v. State of Maharashtra* (2019), 15 SCC 470, MANU/SC/0845/2019.

<sup>22</sup> *P. Rajagopal v. State of Tamil Nadu* (2019) 5 SCC 403, MANU/SC/0532/2019.

### Critique of the SC's Methodology

The Court itself has not taken a consistent approach towards Section 29's application at bail. It sometimes regards the presumption almost as an absolute one (Rajballav Prasad), while at other instances it mitigates its application of the presumption against the backdrop of Article 21 (Union of India v. X).

Academics contend that such inconsistencies result in confusion that defeats child protection and freedom. This absence of legislative clarity causes courts to actually chart the breadth of Section 29.

## **4. COMPARATIVE PERSPECTIVE AND CRITICAL ANALYSIS**

### **4.1. Bail Legislation**

Bail law related to the Protection of Children from Sexual Offences Act, 2012 (POCSO) can't really be examined on its own. Indian criminal law has a history of imposing various restrictions on personal freedom under special laws whenever the legislature addresses urgent social issues. These laws, like the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and the Unlawful Activities (Prevention) Act, 1967 (UAPA), intentionally create exceptions to standard criminal procedures to safeguard society from serious crimes. A look at these laws shows that POCSO is in a different position: it doesn't have a clear statutory bail prohibition like NDPS and UAPA, but Section 29 creates a presumption of guilt that, in reality, makes it tough to secure bail. In contrast, other child-focused laws, like the Juvenile Justice (Care and Protection of Children) Act, 2015, lean more towards rehabilitation and preserving liberty.<sup>23</sup>

#### **(a) NDPS Act, 1985 – Section 37**

The NDPS Act is probably the most straightforward example of strict bail rules. Section 37(1)(b) requires that a court must be convinced not just of the accused's innocence but also that the individual isn't likely to commit any further offenses while out on bail.<sup>24</sup> This requirement goes beyond the usual considerations of whether the accused might flee or tamper with evidence. The Supreme Court, in *Union of India v. Thamisharasi* (1995),<sup>25</sup> called this a "drastic departure" from regular bail principles but still upheld its validity due to the serious problem of drug trafficking. This judgment shows that the

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<sup>23</sup> A. Nitin, *Special Law, Regular Bail, Perverse Outcome? Assessing Judicial Prejudice in Bail Proceedings under the POCSO Act*, **NUJS Law Review** (2024).

<sup>24</sup> § 37(1)(b), Narcotic Drugs and Psychotropic Substances Act, 1985.

<sup>25</sup> *Union of India v. Thamisharasi*, (1995) 4 SCC 190.

courts are willing to limit personal freedom for significant state interests. As a result, getting bail under the NDPS Act can be really hard, unless the prosecution's case looks evidently weak. Critics argue that this high standard leads to prolonged pre-trial detention, which feels a lot like punishment before a conviction.

**(b) UAPA, 1967 – Section 43D(5)**

The Unlawful Activities (Prevention) Act also sets very high bars for bail. Section 43D(5) includes a statutory obstacle if the court thinks the charges are prima facie valid. The Supreme Court in *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019),<sup>26</sup> interpreted this to mean that during the bail process, the court shouldn't dive deep into the evidence. If what's presented suggests a prima facie case of guilt, bail gets denied. This makes the bail process feel pretty mechanical: once charges are set based on prima facie evidence, the court's discretion shrinks significantly. Although the idea of presumed innocence isn't laid out in the Constitution, it's considered a key aspect of Article 21. However, under UAPA, this idea takes a back seat, as liberty gets sidelined by the state's need to combat terrorism and security threats. Scholars highlight that in terrorism cases, being denied bail not only leads to long waits in custody but also trial delays that can stretch for years, which harms the fairness of the legal process.

**(c) POCSO Act, 2012 – Section 29**

The POCSO Act aims to protect kids from sexual offenses through a unique legal framework. Section 29 states that if someone is charged with offenses under Sections 3, 5, 7, and 9 of the Act, there's an assumption that they committed the crime unless proven otherwise. Unlike NDPS or UAPA, POCSO doesn't feature a clear bail prohibition.<sup>27</sup> Instead, Section 29 shifts the burden of proof onto the accused once the prosecution shows basic facts. Even though it's less restrictive than NDPS or UAPA, this provision still tips the scales against the accused when it comes to bail. Courts have interpreted Section 29 in cases like *Rajballav Prasad v. State of Bihar and Union of India v. X* (2020), treating it as a consideration during the bail decision, making it effectively similar to the more stringent conditions in NDPS and UAPA.

**(d) Juvenile Justice (Care and Protection of Children) Act, 2015**

A noteworthy contrast is found in the Juvenile Justice Act. Section 12 of the JJ Act assumes children in legal trouble should generally be granted bail unless their release

<sup>26</sup> *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1

<sup>27</sup> § 29, Protection of Children from Sexual Offences Act, 2012.

poses a risk of them associating with criminals or disrupts justice.<sup>28</sup> This reflects a rehabilitative approach, focusing on reform rather than punishment. Thus, the JJ Act supports a pro-child stance on liberty that directly conflicts with the punitive nature of POCSO, even though both laws claim to promote child welfare. This disconnect highlights the lack of a clear philosophy in India's child-related criminal laws: the JJ Act aims for reintegration, while POCSO often leads to incarceration.

## 5. DISCUSSION AND SYNTHESIS

### 1. *Judicial Consistency and Uncertainty*

Analysis of bail jurisprudence of POCSO cases reveals an apparent disconnect between court approaches. Although the Supreme Court has made it amply clear that Section 29 will not operate as an automatic bar to bail, lower courts tend to adopt a harsher approach and regard the presumption as binding even at the stage of pre-trials. This causes ambiguity, defeating the purpose of predictability of law as well as perhaps extending confinement over an indefinite term.<sup>29</sup>

### 2. *Balancing Individual Freedoms and Protecting Minors*

One of the biggest problems is creating a balance between protection of children from grave crimes and upholding the constitutional freedom of the accused. The Supreme Court has increasingly emphasized the need for such balance by citing Article 21 of its legal discourse. However, such a balance is tenuous—excessive concern with liberty could jeopardize child-centered goals of the Act while an over-reliance upon Section 29 could result in violations of essential rights.<sup>30</sup>

### 3. *The Role of Evidential Standards*

Another of the themes that come out of the analysis is that of the evidentiary material at bail. Judges will frequently have regard to issues like the credibility of the victim's statement, lateness of the FIR, or inconsistencies in the witnesses. While such factors can protect against unjust confinement, they also have the potential of prejudging issues at bail that will at trial impede fairness of proceedings.

### 4. *Legislative Intent vs. Judicial Innovation*

By Section 29, the legislature sought to create a deterrence device by shifting the

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<sup>28</sup> § 12, Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>29</sup> *Special Law, Regular Bail, Perverse Outcome? Assessing Judicial Prejudice in Bail Proceedings under the POCSO Act*, Abhiram Nitin, **NUJS Law Review** (2024).

<sup>30</sup> *Bail and Rights during Trial under General and Special Laws* (2025), Mushirali Saiyed & Mohit Mathur, SSRN: <https://papers.ssrn.com/abstract=5212660>.

evidentiary onus. But case law demonstrates that courts, including the Supreme Court, have attempted to temper the rigidity of the provision with regard to bail-related matters. This judicial fine-tuning is an pragmatic attempt at preventing miscarriages of justice; but again, it does raise the question of whether courts are overstepping their bounds of statutory interpretation by interfering with the legislative intent at its initial stage.

##### 5. *Need for Doctrinal Clarity and Guidelines*

Finally, the synthesis suggests that the absence of uniform guidelines has been the root cause of arbitrariness. A structured judicial framework—perhaps through larger bench rulings or legislative clarification—could provide greater clarity. Such guidelines would ensure that Section 29 is applied consistently, protecting children while safeguarding constitutional guarantees.

## 6. CONCLUSION

The exploratory analysis of bail that has been granted across POCSO cases at the Supreme Court reveals the challenge of balancing legislative intent with constitutional protection. The POCSO legislation was passed with the intention of affording children strict protection, and Section 29's reverse onus of proof is an expression of that protective mindset. That the use of such presumption at the bail stage has itself become a subject of concern regarding arbitrariness as well as breach of the right of personal liberty pursuant to Article 21.

The courts at the highest level have sought to reassure such fears by explaining that Section 29 does not automatically operate at the pre-trial stage. Instead, bail decisions must be guided by existing criminal law principles of proportionality, presumption of innocence, and procedural fairness. Nevertheless, inconsistencies between High Courts and subordinate courts persist, causing inconsistent outcomes that vitiate the criminal justice system.

This analysis demonstrates the need for a doctrine of balance—one that respects the legislative intent of child protection but ensures that those suspected of criminal activity are not faced with indefinite pre-conviction imprisonment. Increased clarity by way of more express judicial guidelines, perhaps even legislative illumination, could provide greater assurance of consistency. Ultimately, the chief challenge lies in creating a jurisprudence that adequately prevents child abuse while not undermining the constitutional foundation of freedom and fairness.

## 7. LIMITATIONS

Though this work provides an exploratory analysis of bail jurisprudence of the POCSO Act with stress upon the Supreme Court, the same is qualified by several limitations.

The first of these limitations is that the scope has been delimited almost entirely to judgments of the Supreme Court alone. That means exceptions and inconsistencies of the High Courts and the subordinate courts have not been studied at large. Since most of the POCSO cases are disposed off by the trial courts, their reaction towards Section 29 and bail is of paramount significance but falls outside the present study's scope.

Second, the study is of a doctrine kind because case law, statutes, and secondary sources were depended upon. Statistical data of bail grant rates, pre-trials detention durations, or socio-economic backgrounds of accused individuals were not included. Incorporation of such empirical analysis could create a richer picture about the actual grant/ denial of bail by the Act. Third, because reported judgments had to be used, unpublished/ unreported orders that often best reflect day-to-day bail practices were left out. This entails focusing the narrow range of vision on cases of broad legal implications while disregarding routine but no less significant decisions.

Lastly, comparison was restricted to shortlisted jurisdictions but did not undertake a comprehensive worldwide survey. Greater comparative structure could also explain further regarding dissimilar balancing of child protection against the liberties of individuals.