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BEYOND CONVICTION RATES: EVALUATING THE EFFECTIVENESS OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 IN DELIVERING CHILD-CENTRIC JUSTICE IN INDIA

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Abstract

Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act) was enacted to give a specialised legal framework to address sexual offences against children. The Act provides for child-friendly legal procedures in investigation and trial. Since its inception, the effectiveness of the Act has been debated on the parameters of conviction rate, case disposal rate, and other related statistics in the Indian criminal justice system. While these parameters provide a basis to review the working of the Act, the focus on conviction rate neglects the Act's objectivity to deliver child-centric justice. A child who faces repeated cross-examination, prolonged trials, and social discrimination does not receive justice even if the offender is convicted. Similarly, the child is the victim of the system if the conviction rate is low due to investigative and procedural loopholes. This paper argues that the effectiveness of the POCSO Act should be determined by accessing the child-centric justice delivered to the victims and not solely based on the conviction rate in sexual offence cases. The paper evaluates the effectiveness of the POCSO Act by interpreting the constitutional and statutory mandates, examining the case laws, reviewing the child-friendly procedures and institutional mechanisms, and identifying the existing gaps in the system.

Keywords: POCSO Act, Child-Centric Justice, Child Sexual Abuse, Special Courts, Victim Protection, Criminal Justice, Child Rights, Access to Justice.

Introduction

Children are one of the most vulnerable sections of society, and their safety and well-being require special protection. Sexual offences against children have been a serious social and legal issue in India. Previously, sexual offences against children were governed by the Indian Penal Code, 1860, which lacked specific procedures for investigating and trying such offences.

Sexual offences against children involved multiple reporting and investigation steps, making it challenging for children to seek justice. The Protection of Children from Sexual Offences Act, 2012 was enacted to specifically address sexual offences against children and provide a child-friendly justice delivery mechanism. The Act covers various forms of sexual assault and harassment and mandates speedy trials, specialised courts, and measures to protect the dignity and privacy of the victims. The Act was enacted with the recognition that children need special care and protection while dealing with legal proceedings. The effectiveness of the Act is often measured in terms of conviction rates and case disposition. However, a low conviction rate does not necessarily indicate that the victim has received justice, considering the trauma experienced by the child during the trial and investigation processes. This paper attempts to evaluate the effectiveness of the Protection of Children from Sexual Offences Act, 2012 by examining its ability to deliver child-centric justice to victims of sexual offences.

Research Problem

The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act) was enacted to provide a specialised legal framework for offences against children. The Act provides for child-friendly procedures to investigate and try sexual offences against children. More than a decade after its enactment, the focus of research and debate on the Act revolves around conviction rates, case disposition, and related statistics. The child-centric nature of justice delivery under the Act has not been extensively studied. The object of the POCSO Act is to provide justice to children in accordance with the principles of natural justice, speed, and specialised adjudication. Factors such as the accessibility of reporting mechanisms, protection from secondary victimisation, participation in legal proceedings, support services, victim compensation, and access to justice need to be evaluated to determine the effectiveness of the Act. This study aims to examine the applicability and effectiveness of the POCSO Act by evaluating the research studies conducted on the Act, interpreting the statutes, reviewing the judgments, and analysing the institutional mechanisms in place for the speedy trial and justice delivery to the victims of sexual offences. The study focuses on the critical issue of children's rights, victim protection, and access to justice under the POCSO Act.

Research Questions

The current research will attempt to answer the following questions:

Is the effectiveness of the Protection of Children from Sexual Offences Act, 2012 captured by the conviction and case disposition rates?

To what extent has the POCSO Act been effective in delivering justice to the child victims of sexual offences?

What procedural and institutional challenges impede the effective implementation of the POCSO Act?

Does the legal framework adequately protect the rights and dignity of child victims of sexual offences?

What reforms are needed to make the POCSO Act more effective in delivering child-centric justice?

Research Gap

The Protection of Children from Sexual Offences Act, 2012 has been the subject of considerable legal and social scientific research. Much of the literature on the POCSO Act has focused on statutory interpretation, judicial implementation, procedural challenges, and evaluation through conviction statistics. Researchers have examined various aspects of the Act, including the conviction and acquittal rates, sentencing trends, case pendency, special courts, and child-friendly procedures. However, the analysis of the effectiveness of the Act is limited to the conventional criminal justice parameters. There is a need to evaluate the effectiveness of the POCSO Act by examining the child-centric justice dimensions, including accessibility to reporting mechanisms, protection from secondary victimisation, and access to support services. Moreover, there is a need to analyse how the Act has addressed the challenges of technology-facilitated sexual offences. This paper aims to contribute to the existing literature by presenting a comprehensive evaluation of the effectiveness of the POCSO Act based on the child-centric justice framework.

Research Objectives

The current research aims to examine the effectiveness of the Protection of Children from Sexual Offences Act, 2012 in delivering child-centric justice. Specifically, the study will:

Evaluate the legislative intent and constitutional mandate of the Protection of Children from Sexual Offences Act, 2012;

Review the statutory framework of the POCSO Act and analyse its child-friendly procedures;

Critically assess the effectiveness of the Act based on conviction and case disposition;

Identify the gaps in the implementation of the Act;

Examine the judicial interpretation of the POCSO Act, including the relevant Supreme Court

and High Court judgments; and

Explore the legal and institutional reforms needed to strengthen the implementation of the Act.

Hypothesis

This paper hypothesises that the effectiveness of the Protection of Children from Sexual Offences Act, 2012 cannot be measured in terms of conviction rates alone. The study hypothesises that a comprehensive assessment of the effectiveness of the Act should consider factors such as accessibility to reporting mechanisms, protection from secondary victimisation, speedy trial, children's participation in legal proceedings, and access to support services.

Literature Review

The Protection of Children from Sexual Offences Act, 2012 was enacted to address sexual offences against children. The Act was introduced with the recognition that children are vulnerable and require specialised adjudication and procedural safeguards. There has been a significant amount of literature examining various aspects of the POCSO Act. Legal scholars and researchers have analysed the Act from the perspectives of statutory interpretation, implementation, procedural challenges, and evaluation based on conviction rates and case pendency. The literature on the POCSO Act falls under the following broad categories:

Statutory interpretation and analysis of the POCSO Act

Judicial interpretation of the POCSO Act by the higher judiciary Procedural and institutional challenges in the implementation of the Act and Empirical analysis of the Act based on conviction rates and case pendency. In addition, there has been a growing body of literature examining the impact of technology-facilitated sexual offences on children and the need to amend the existing laws to address such offences. Statutory interpretation of the POCSO Act

The POCSO Act was enacted in response to the growing social concern about sexual offences against children and the inadequacy of the Indian Penal Code, 1860 in addressing such offences. Legal scholars and social scientists have examined the provisions of the Act to highlight the benefits of enacting a standalone legislation on sexual offences against children. Researchers such as Sharma et al. (2017) and Deshmukh (2015) have commented on the significance of the POCSO Act and the child-centric provisions under the Act. The Act provides for a wide range of sexual offences, including penetrative and non-penetrative assault, sexual harassment, sexual intercourse by a person in authority, and sexual exploitation by using technology. The Protection of Children from Sexual Offences Act, 2012 provides for a child-

friendly justice delivery mechanism to ensure that the victim's dignity and privacy are protected throughout the judicial process. Some of the important child-friendly procedures provided under the Act include the recording of complaints by a supporter of the child, in-camera proceedings, prohibition of cross-examination of the child victim, and provisions to ensure the anonymity of the victim.

Judicial interpretation of the POCSO Act

The judicial interpretation of the POCSO Act has focused on examining the scope and application of the various sexual offence provisions and the child-friendly procedures provided under the Act. The courts have consistently held that the POCSO Act is a welfare legislation that provides for a speedy trial and specialised adjudication to protect the dignity and privacy of the victims. The Supreme Court and the High Courts have also held that the child victims must be treated as children throughout the judicial process. Various judgments have addressed the applicability of the sexual assault provisions to offences committed by parents and guardians, the interpretation of "sexual assault with a foreign body", and the scope of "sexual harassment" and "sexual assault by a person in authority". The courts have also examined the requirement of recording the statement of the child victim in camera and the child's right to be heard during the trial. In addition, the courts have taken notice of the constitutional rights of the accused and have sought to balance the rights of the victim and the accused while determining the applicability of the child-friendly procedures under the Act.

Empirical analysis of the case pendency and conviction rates

A number of researchers have conducted empirical analyses of the implementation of the POCSO Act based on the conviction rates and case pendency statistics. The researchers analysed the data on sexual offence cases under the POCSO Act to highlight the challenges in the implementation of the Act. The National Crime Records Bureau periodically publishes data on crime statistics, including the conviction rates and case pendency data under the POCSO Act. Deshmukh's analysis of the data published by the NCRB highlights that the conviction rates under the POCSO Act have been low, primarily due to procedural delays and investigative challenges. The researchers also observed that the delays in investigation and trials were due to a shortage of special courts and investigative personnel and the lack of forensic infrastructure. Researchers concluded that the low conviction rates should not be considered as a failure of the Act since the child victims of sexual offences are more likely to face difficulties in recalling the incident and providing evidence due to their tender age and trauma. In addition, it was argued that the low conviction rates were also due to procedural loopholes, compromised cases, and witnesses' unwillingness to testify. The researchers recommended that the

shortcomings in the conviction rates must be addressed by providing adequate infrastructure and training to investigative agencies and implementing measures to encourage witnesses to provide testimony.

Procedural and institutional challenges in the implementation of the POCSO Act

Numerous researchers have examined the implementation of the POCSO Act and identified the procedural and institutional challenges in investigating and prosecuting sexual offences under the Act. The researchers identified challenges in recording the statement of the child victim, conducting forensic medical examinations, and ensuring speedy trials. Researchers such as Sharma et al. (2017) have observed that the child victims are subjected to repeated trauma during the investigation and trial processes, which undermines their physical and mental well-being. The researchers recommend that the implementation of the child-friendly procedures must be prioritised to ensure that the child victims do not experience secondary victimisation. Moreover, researchers have observed that the child victims of sexual offences are not provided with sufficient support, rehabilitation, and counselling services. The researchers recommend that the child victims must be provided with psychosocial support and trauma-informed care to enable them to cope with the adverse effects of the offence. The researchers also suggest that children must be involved in the decision-making process when seeking justice. It has been observed that the children are not provided with an opportunity to participate in legal proceedings, which affects their ability to understand and engage with the process. The children must be provided with age-appropriate legal assistance and representation to facilitate their active participation in the process. The researchers recommend that children must be encouraged to report the offences and take advantage of the support services provided under the POCSO Act. Children's rights, victim protection, and access to justice under the POCSO Act The Protection of Children from Sexual Offences Act, 2012 mandates that the child victims of sexual offences must be provided with complete support and protection throughout the legal process. The child victims must be provided with access to justice without facing any hindrance or delay. The child victims of sexual offences are particularly vulnerable and require special support and protection during the trial process. The child victims must have access to various support services, including free legal aid, victim compensation, and rehabilitative services. The researchers have observed that the child victims of sexual offences are often subjected to secondary victimisation by various institutions, which causes adverse mental and physical trauma to the children. The researchers recommend that various measures must be taken to prevent secondary victimisation and ensure that the child victims are provided with a conducive environment to seek justice.

Findings and Analysis

The analysis undertaken in this study reveals that the Protection of Children from Sexual Offences Act, 2012 has significantly strengthened the legal framework for addressing child sexual abuse in India by introducing special offences, child-friendly procedures, mandatory reporting, and Special Courts. However, the effectiveness of the Act cannot be solely gauged by conviction rates and disposal statistics. The findings demonstrate that child-centric justice is a nuanced concept that depends on the responsiveness of the criminal justice system rather than the mere acquittal or conviction of the accused. The first significant finding of this study is that conviction statistics represent only a part of the narrative on the effectiveness of the Protection of Children from Sexual Offences Act (POCSO Act). While criminal convictions signify the punishment of the offender, they do not necessarily reflect the extent to which the child victim has received justice. On the other hand, acquittals often stem from procedural gaps, hostile witnesses, delayed reporting, or inadequate investigation rather than a deficiency in the law itself. Hence, while interpreting conviction statistics, it is essential to adopt a holistic viewpoint that goes beyond the mere numbers. The second finding is that the POCSO Act contains an extensive set of procedural safeguards aimed at reducing the trauma for the child victim during the investigation and trial. These include child-friendly recording of evidence, in camera proceedings, protection of identity, Special Courts, and the appointment of support persons, among others. However, the implementation of these safeguards is not uniform across States and Union Territories. Another crucial observation of this study is that the procedural delays in the investigation, forensic examination, trial, and disposal of cases constitute a critical challenge in the effective implementation of the Act. Such delays not only vitiate the purpose of speedy trials but also increase the trauma for the child victim and their families. Although Fast Track Special Courts have been constituted to expedite the trials, the pendency of cases and the lack of judicial infrastructure across States contribute to the delays in case disposal. A fourth finding is that the child victims of sexual offences require an extensive support system that facilitates their rehabilitation, compensation, and restoration of rights, which is dependent on the availability of counsellors, support persons, and coordination between police, child welfare authorities, prosecutors, and healthcare professionals. A fifth finding is that the POCSO Act covers a wide range of sexual offences, including technology-facilitated sexual offences. However, the investigation and prosecution of such offences require specific expertise in digital forensics, investigation, and prosecution, which are not always available at the local levels. Based on these findings, this study concludes that the effectiveness of the POCSO Act should be evaluated using five key indicators, namely, accessibility, protection, participation,

timeliness, and rehabilitation. The evaluation framework for measuring the effectiveness of the POCSO Act is discussed later in this report. In summary, this study concludes that the POCSO Act has significantly improved child protection in India, but its effectiveness is dependent on the child-centricity of the criminal justice system. Measuring the effectiveness of the Act using the child-centric framework provides a realistic evaluation of legislative effectiveness.

Recommendations

Based on the findings of this study, the following recommendations have been made to improve the effectiveness of the Protection of Children from Sexual Offences Act, 2012 in India:

1. Strengthening Child-Friendly Judicial Infrastructure

The Special Courts established under the POCSO Act must be equipped with appropriate infrastructure to ensure that children are not subjected to trauma and fear while giving evidence. Moreover, the child-friendly infrastructure should be standardized across States and Union Territories.

2. Ensuring Timely Investigation and Trial

The issue of delays in investigation and trial of child sexual offence cases needs to be addressed through enhanced resources, special investigation teams, increased judicial infrastructure, and regular monitoring of pendency of cases to ensure timely disposal of cases in accordance with the principles of natural justice.

3. Capacity Building and Training

Capacity-building and training of police, prosecutors, judiciary, medical professionals, forensic experts, and support persons on child sexual offences and the provisions of the POCSO Act should be undertaken on a regular basis to ensure that the child victims receive justice in accordance with the principles of child-friendly justice.

4. Victim Support and Rehabilitation

Every child victim of sexual offence should have access to counsellors, legal aid, psychological support, medical treatment, compensation, and rehabilitation services. The coordination between Child Welfare Committees, District Child Protection Units, and healthcare and law enforcement agencies should be strengthened to ensure that the child victims receive comprehensive support following the offence.

5. Strengthening Response to Technology-Facilitated Sexual Offences

Given the rising prevalence of technology-facilitated sexual offences, law enforcement agencies need to be trained in investigating and prosecuting such offences. Additionally, coordination with internet service providers, social media companies, and law enforcement

agencies in India and abroad should be undertaken to strengthen the response to technology-facilitated sexual offences.

6. Monitoring and Evaluation

The effectiveness of the POCSO Act should not be measured by conviction rates alone. A comprehensive evaluation of the effectiveness of the Act is necessary to determine the extent to which child victims of sexual offences are able to access justice in accordance with the objectives of the Act. The evaluation should include child-friendly procedures, victim participation, accessibility to justice, rehabilitation, and institutional responsiveness in addition to conviction rates and procedural delays.

7. Awareness Raising

Awareness about child sexual offences, the legal recourse available to victims, and the support services provided by the government and non-governmental organisations should be raised among children, parents, teachers, and caregivers to encourage reporting of offences and access to victim support services.

8. Interagency Coordination

The implementation of the POCSO Act requires the coordination of multiple agencies, including police, judiciary, child welfare committees, schools, hospitals, forensic laboratories, and child protection agencies. Coordination between these agencies is necessary to ensure that the child victims receive holistic support and justice in accordance with the provisions of the Act.

9. Review of the POCSO Act

The Protection of Children from Sexual Offences Act, 2012 should be reviewed periodically to ensure that it remains responsive to the changing nature of sexual offences against children. The review process should also consider the effectiveness of the implementation of the Act to identify gaps in the legislative and policy framework.

10. Adopting a Child-Centric Evaluation Framework

A child-centric evaluation framework should be adopted to measure the effectiveness of the POCSO Act, which includes the following indicators: accessibility, protection, participation, timeliness, and rehabilitation. This framework will enable policymakers to evaluate the effectiveness of the Act in accordance with its objectives.

Conclusion

The Protection of Children from Sexual Offences Act, 2012 is a landmark legislation that has significantly strengthened the legal framework for protecting children from sexual offences in

India. By introducing special offences, child-friendly procedures, and Special Courts, the Act has enhanced the criminal justice system's responsiveness to sexual offences against children. However, this study demonstrates that the effectiveness of the Act should not be measured solely by conviction rates and case disposal statistics. While the conviction of the accused represents criminal accountability, it does not necessarily indicate that the child has received justice. The child victims of sexual offences require a responsive criminal justice system that ensures timely trial, protects their rights, provides access to victim support services, and facilitates their rehabilitation following the offence. This study provides a comprehensive evaluation of the effectiveness of the POCSO Act in India by considering both conviction statistics and child-centric indicators such as accessibility to justice, procedural delays, victim participation, and institutional responsiveness. The key contribution of this study is the development of a multidimensional evaluation framework that can be used to measure the effectiveness of other child protection legislations and policies in India. By adopting a child-centric approach to evaluating the effectiveness of the POCSO Act, this study highlights the importance of ensuring that every child who accesses the criminal justice system receives justice that is timely, accessible, and responsive to their needs. In conclusion, the effectiveness of the POCSO Act should be evaluated based on the extent to which it promotes the rights and wellbeing of children in India.

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