
DEFENDING CHILDHOOD: A COMPREHENSIVE ANALYSIS OF INDIA'S POCSO ACT AND AN INTERNATIONAL COMPARATIVE ANALYSIS

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ABSTRACT

This paper undertakes a thorough examination of child protection laws in India, the USA, and the UK, with a specific focus on the Protection of Children from Sexual Offences (POCSO) Act in India. This study shows that between 2012 and 2024 there was an alarming 30.8% rise in POCSO cases and when looking closer at this data, there is a large gap in reporting and prosecution rates among the different states. Although this growing trend of reported cases may show an increasing recognition of child sexual abuse, it may also suggest some problems with the current laws and their enforcement.

This paper, while comparing international child protection laws, shows how different yet similar three different countries are. One such example is the POCSO Act in India, which is so wonderful because it covers everything from sex offenses to child pornography to protection of the child etc. But the research shows that India's legal system is plagued with the problem of uneven and inefficient enforcement of these laws, as is seen by the geographic disparities in the nature of the cases and the verdicts of the courts.

On the other hand, the laws regarding child protection in the USA are very different because the USA has a decentralized system and the laws are determined on a state by state basis and therefore there is a severe lack of uniformity and possibly even some holes in protection. Every state has their own laws and regulations, so that leaves room for different legal reactions and victims assistance all over the nation. Without a federal requirement, there is no general plan that provides continual safeguard and justice to children all over the United States.

In the UK there is a much more integrated approach with a great deal of multi-agency work and a consolidated legal framework to safeguard children. In the UK, however, the system is better because the different departments are more coordinated, and the child protection system is more effective, and the response to child abuse is more unified.

The focus of this paper underlies the analysis of the protection of children and the pursuit of justice for victims of child sexual abuse.

Key words: Protection, Child, Sexual offenses, Sexual Assaults, Penetrative Sexual Assault, Aggravated Sexual Assault, Child Pornography, Special Courts, Child welfare committee, Protection Officer

CHAPTER 1. INTRODUCTION

Children, often heralded as the future of our nation, paradoxically remain among the most vulnerable segments of our society. This dichotomy underscores a pressing concern: despite their potential and promise, children in India face grave risks, particularly from crimes against them. In recent years, India has witnessed a disturbing rise in crimes against its most vulnerable citizens—children. These crimes, particularly those under the ambit of the Protection of Children from Sexual Offences (POCSO) Act, 2012, have reached alarming proportions, as highlighted by the latest data from the National Crime Records Bureau (NCRB). The period from 2020 to 2021 alone saw a troubling 30.8% increase in POCSO cases, with 53,874 incidents reported in 2021 compared to 47,221 the previous year (National Crime Records Bureau, 2022)¹.

This surge in reported cases paints a stark picture of the challenges faced in protecting children across different states in India. Uttar Pradesh, Maharashtra, and Kerala emerge as the states with the highest reported incidents, reflecting regional disparities and the complex landscape of child protection (National Crime Records Bureau, 2022). Notably, Rajasthan has seen a significant number of minors under 18 years old falling victim to these crimes, emphasizing the vulnerability of children in certain regions (National Crime Records Bureau, 2022).

While incidents like kidnapping and abduction constitute a significant portion of crimes against children, the prevalence of POCSO cases underscores a specific and deeply concerning subset of offenses. This underscores the multifaceted threats children in India face today and the critical role of legislative measures like the POCSO Act in safeguarding their rights.

This research endeavors to delve into the objectives and procedural frameworks of the POCSO Act through detailed case studies of landmark legal decisions. Furthermore, by comparing

¹ NCRB: POCSO cases increased by 30.8% in last five years IndiaTracker. Available at: <https://www.indiatracker.in/story/ncrb-pocso-cases-increased-by-30.8-in-last-five-years>

international standards in child protection, the study seeks to identify global best practices that could inform and strengthen India's legal and enforcement strategies.

CHAPTER 1.1. ANALYSIS OF POCSO ACT, 2012

(OBJECTIVE AND SCOPE OF THE ACT)

Addressing the grim realities of increasing crimes against children demands a concerted effort from policymakers, law enforcement agencies, and civil society alike. For the efficacy in protecting the dignity and rights of our children, a statute was legislated specifically addressing crimes against children, the Protection of Children from Sexual Offences (POCSO) Act, 2012 which came into force w.e.f 15th November, 2012. The POCSO Act, 2012, is a comprehensive and specific legislative which tends to protect children from all kinds of sexual offences. Before the commencement of the POCSO Act, 2012, the only legislature which specifically aimed at the protection of children's rights was the Goa's children Act, 2003 (and Rules, 2004). Aside from this act, any sexual offence against children was to be classified as "Unnatural act" under section 377 or sections such as 354 ("Assault or criminal force to woman with intent to outrage her modesty") and 375 ("Rape") of the Indian Penal Code, 1860; however it did not protect male children's right in any way and therefore did not provide an inclusive protection to children's rights collectively and was gender biased. Hence the POCSO Act, enacted in 2012, represents a significant legislative effort by the Indian government to combat the pervasive issue of child sexual abuse. This Act was formulated with clear objectives aimed at protecting children below the age of 18 years from various forms of sexual offenses and ensuring their welfare through comprehensive legal provisions.

Objective:

- 1. Targets a specific sect of the society:** The POCSO Act, 2012 is designed in ways specifically for children (or minor) that fall under the bracket of age group below the age of 18 years.
- 2. Detailed and defines offenses clearly:** The primary objective of the POCSO Act is to provide a robust and sturdy legal framework for the protection of children from sexual abuse and exploitation. It achieves this by clearly defining and categorizing different types of sexual offenses against children. The very Act recognizes a broad spectrum of

offenses, ranging from sexual assault and penetrative sexual assault to using children for pornographic purposes. By explicitly defining these offenses, the Act aims to ensure that all forms of sexual exploitation of children are legally recognized and punishable under the law.

- 3. Child-friendly processes:** The POCSO Act aims to establish child-friendly procedures during the investigation and trial of cases involving child sexual abuse. It prioritizes the protection of child victims throughout the legal process, emphasizing the need for sensitivity and confidentiality in handling their cases.
- 4. Mental health of the victim is prioritized:** One of the key procedural safeguards provided by the Act is the prioritization of mental health of the victims. The requirement to record the statement of the child victim has to be done in a child-friendly manner, ensuring that the process is not traumatic or intimidating for the child. This includes conducting interviews in a supportive environment, with the presence of a support person or guardian appointed to assist the child during proceedings.
- 5. Swift justice delivery:** Justice delivery system is often considered as one of the biggest loopholes in the Indian judicial system, however certain cases like POCSO Cases are handled with the utmost caring and the justice is delivered in a quick yet stern way. The Act aims to expedite the legal process, ensuring timely justice for victims of child sexual abuse. It mandates that cases under the POCSO Act be disposed of within a strict timeline to prevent delays in justice delivery.
- 6. Special Courts:** To ensure the protection of the victims and their rights, separate special courts are built which also ensure quick justice delivery.
- 7. Preventive Measures:** Beyond punishment, the Act emphasizes preventive measures such as awareness programs, education on safe practices for children, and initiatives to curb the prevalence of child sexual abuse.
- 8. Gender Neutral:** One of the most outstanding objectives of the POCSO Act is to maintain a gender neutral legislature and to have a proactive step towards gender neutrality when it comes to sexual offenses against children.

Scope:

- 1. Firstly**, the Act applies to all forms of sexual offenses committed against children within the territory of India. This jurisdictional scope ensures that perpetrators cannot evade prosecution by crossing state or national boundaries, thereby facilitating effective law enforcement and justice delivery.
- 2. Secondly**, the Act outlines specific penalties and punishments for offenders found guilty of committing sexual offenses against children. These penalties range from imprisonment for a minimum of three years to life imprisonment, depending on the severity of the offense. Additionally, the Act provides for fines and compensation to be paid to the victim as part of the restitution process.
- 3. Furthermore**, the POCSO Act mandates the establishment of special courts and child welfare committees to handle cases related to child sexual abuse. These specialized institutions are tasked with ensuring speedy trials and sensitive handling of cases involving child victims. The Act also places responsibilities on various stakeholders, including law enforcement agencies, medical professionals, and educational institutions, to report cases of child sexual abuse promptly and provide necessary support to victims.
- 4. In terms of preventive measures**, the POCSO Act emphasizes the importance of awareness and education programs aimed at sensitizing communities about child sexual abuse and the legal rights of children. These initiatives are designed to prevent instances of abuse and empower children and their families with knowledge about safe practices and reporting mechanisms.

Procedural Safeguards:

Understanding the depth of the offense and how aggravated effects they leave on the victims, certain procedural safeguards are provided for Victims. The POCSO Act incorporates several procedural safeguards to protect the rights and well-being of child victims. It ensures that the statement of the child victim is recorded in a manner that is comprehensible to the child and avoids any form of leading questions or coercion. Similarly it also allows for the presence of a support person or guardian appointed to assist and accompany the child during the investigation and trial stages. Understanding the importance of children's rights, it also

ensures confidentiality and anonymity of the child victim throughout the legal proceedings, with strict provisions against the disclosure of the child's identity to maintain privacy and prevent social stigma. Some special measures are alongside also taken to create a child-friendly environment during court proceedings, including the use of specially designed courtrooms and procedures that minimize the trauma and intimidation experienced by child victims.

CHAPTER 2. CASE LAW ANALYSIS

I: (Jarnail Singh v. State of Haryana)

Citation:

AIR (2013) SC. 3467

Issue raised:

Did the appellant commit the offenses of kidnapping and raping a minor under the Protection of Children from Sexual Offences (POCSO) Act, 2012?

Facts:

The appellant, Jarnail Singh, was accused of kidnapping and raping the minor daughter of Savitri Devi while she was sleeping. The incident occurred on 25.3.1993. The prosecution alleged that Jarnail Singh forcibly took the prosecutrix from her home and committed sexual assault on her.

Decision:

Yes, the Supreme Court of India convicted the appellant, Jarnail Singh, for offenses under the POCSO Act, 2012.

Reason:

The Supreme Court observed that the procedure used to determine the age of a child in conflict with the law, as per the Juvenile Justice (Care and Protection of Children) Rules, 2007, could also be applied in cases falling under the POCSO Act, 2012. The court relied on this rule to

ascertain the age of the victim and confirmed that she was a minor at the time of the offense. Based on the evidence presented, including testimonies and medical reports, the court found Jarnail Singh guilty of kidnapping and raping a minor. The court emphasized the stringent provisions of the POCSO Act, designed to protect children from sexual offenses, and applied them to deliver justice in this case.

Conclusion:

This case analysis highlights the application of procedural rules for determining the age of a minor under the POCSO Act, as well as the court's decision based on the evidence and legal principles involved.

II: (Attorney General of India v. Satish and anr.)

Citation:

(2021) SCC Online SC 42

Issues raised:

Did the act of grabbing a child's breasts without making "skin-to-skin contact" constitute molestation under the Protection of Children from Sexual Offences (POCSO) Act, 2012?

Facts:

In *Satish Ragde v. State of Maharashtra* (2021), the Bombay High Court's Nagpur Bench ruled that the act of grabbing a child's breasts without making "skin-to-skin contact" constituted molestation under the POCSO Act, 2012. This judgment by Justice Pushpa Ganediwala received significant criticism and led to appeals filed by the Attorney General of India, the National Commission for Women, and the State of Maharashtra against this decision.

Decision:

The Supreme Court of India, in *Attorney General for India v. Satish and another* (2021), set aside the Bombay High Court's judgment and clarified the interpretation of molestation under the POCSO Act, 2012.

Reason:

The Court observed that the interpretation of the term "molestation" under the POCSO Act should align with the legislative intent and the protection of children from sexual offenses. It applied the "mischief rule" of statutory interpretation, emphasizing that courts must interpret laws to curb harm and promote remedies effectively. The court held that grabbing a child's breasts without making "skin-to-skin contact" did not fall within the scope of molestation as intended by the POCSO Act. It underscored the need for a strict interpretation of offenses under the Act to ensure that only acts explicitly intended by the legislature are considered offenses. However the court found the perpetrator guilty under section 354 of the Indian Penal Code, 1860 stating that there was an involvement of criminal force or assault to outrage the modesty of a female.

Conclusion:

This case analysis highlights the Court's role in clarifying the interpretation of statutory provisions under the POCSO Act, emphasizing legislative intent and protecting children from sexual offenses through judicial scrutiny and interpretation.

III: Nipun Saxena v. Union of India (2018)

Citation:

(2019) 2 SCC 703

Issues raised:

Did the publication or dissemination of the victim's identity violate the provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012, and related guidelines?

Facts:

The Supreme Court of India, in *Nipun Saxena v. Union of India* (2019), addressed issues related to the protection of the identity of victims of sexual offenses under the POCSO Act, 2012. The case involved guidelines issued by the Supreme Court to prevent the disclosure of the victim's identity in media and public domains.

Decision:

The Supreme Court laid down guidelines to safeguard the identity of victims of sexual offenses under the POCSO Act, 2012, and related provisions.

Reason:

The Supreme Court emphasized the importance of protecting the privacy and dignity of victims, especially children, who are particularly vulnerable. It held that the publication or broadcast of a victim's name or any detail that could lead to their identification, whether in print, electronic, or social media, is strictly prohibited. The court underscored that even in cases involving deceased or mentally ill victims; their identity should not be revealed without strong justifications decided by the competent authority, such as the Sessions Judge. Furthermore, the Supreme Court directed that FIRs for offenses under specified sections of the Indian Penal Code (IPC) and POCSO Act should not be made public to prevent further victimization. It also mandated that all documents revealing the victim's identity should be kept under seal, with strict instructions for confidentiality maintained by investigating agencies and courts. Regarding juvenile victims under the POCSO Act, the court ruled that their identity can only be disclosed if it is deemed beneficial for the child, with permission granted by the Special Court handling the case. Additionally, the Supreme Court directed all States and Union Territories to establish 'One-Stop Centers' in every district within one year from the judgment date. These centers were intended to provide integrated support and assistance to victims of sexual offenses, ensuring comprehensive care and rehabilitation.

Conclusion:

This case highlights the Supreme Court's proactive approach in protecting the rights and privacy of victims under the POCSO Act, laying down comprehensive guidelines to prevent the disclosure of identities and promote effective implementation of legal safeguards across the country.

IV: Alakh Alok Srivastava v. Union of India and ors. (2018)

Citation:

AIR (2018) SUPREME COURT 2440

Issues:

Did the guidelines laid down by the Supreme Court of India in *Alakh Alok Srivastava v. Union of India and Others* (2018) adequately address the expeditious trial of cases under the Protection of Children from Sexual Offences (POCSO) Act, 2012?

Facts:

In *Alakh Alok Srivastava v. Union of India and Others* (2018), the Supreme Court of India addressed the need for expeditious trial of cases under the POCSO Act, 2012. The case involved the formulation of guidelines aimed at ensuring timely and efficient disposal of POCSO cases by Special Courts.

Decision:

The Supreme Court laid down specific guidelines to be followed by Special Courts while trying cases under the POCSO Act, 2012, to ensure completion of trials within one year from the date of taking cognizance of the offense, as mandated by Section 35 of the Act.

Reason:

The Supreme Court recognized the urgency and sensitivity of cases involving child sexual offenses, emphasizing the importance of expediting trials to deliver timely justice and uphold the rights of child victims. The guidelines mandated the establishment of Special Courts dedicated to handling POCSO cases and ensuring that presiding officials receive training in child protection and psychological aspects. Furthermore, the court directed Special Courts to avoid unnecessary adjournments and adhere strictly to procedural timelines outlined in the POCSO Act. It tasked Chief Justices of High Courts with forming three-judge committees to supervise and monitor the progress of POCSO cases. In cases where three judges were unavailable, Chief Justices were authorized to form Judge Committees to oversee these matters. The Supreme Court also emphasized the role of law enforcement agencies in ensuring effective investigation and witness management, directing the formation of Special Task Forces under the Director-General of Police or equivalent State authorities. Additionally, the guidelines emphasized creating a child-friendly environment within Special Courts, aligning with the

provisions of the POCSO Act to ensure that the proceedings are conducted in a manner sensitive to the needs and rights of child victims.

Conclusion:

This case underscores the Supreme Court's proactive stance in enhancing the efficiency and effectiveness of the judicial process in handling POCSO cases, aiming to protect children from sexual offenses and deliver justice within a defined timeframe.

CHAPTER 3. ANALYSIS

CHAPTER 3.1 STATISTICAL ANALYSIS

According to NCRB reports, the number of cases reported under the POCSO Act has shown an increasing trend over the years. The data typically includes the total number of cases registered under various sections of the POCSO Act across different states and union territories in India. NCRB publishes annual reports that provide detailed statistics on crimes against children, including cases under the POCSO Act.

The reports categorize cases by type of offense (sexual assault, sexual harassment, child pornography, etc.) and provide insights into the trends and patterns observed. From 2012 to 2024, the POCSO Act cases in India have shown an increase. In 2021, there were 53,874 POCSO² cases recorded across the country, with Uttar Pradesh reporting the highest number of cases³. Uttar Pradesh recorded the highest number of POCSO cases in 2022 with a total of 8,151 incidents, followed by Maharashtra, Madhya Pradesh, Tamil Nadu, and Rajasthan⁴. Maharashtra recorded the most number of crimes against children in 2022, with 20,762 cases registered, and followed by Madhya Pradesh and Uttar Pradesh⁵.

² <https://ncrb.gov.in/>

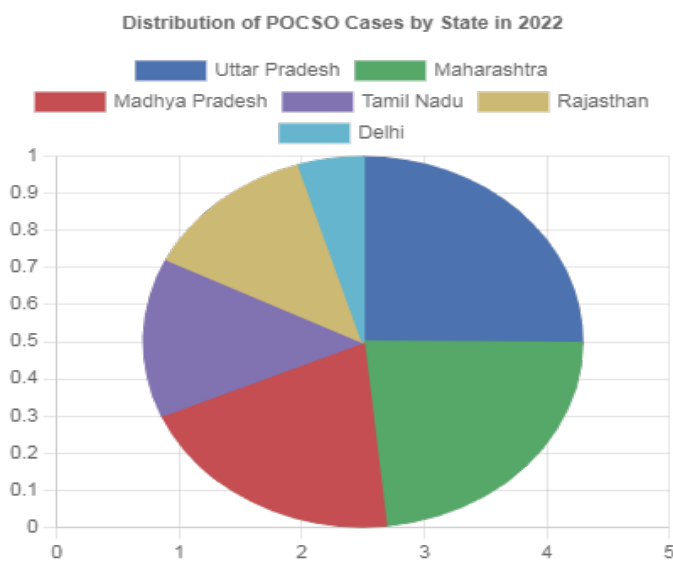
³ <https://www.indiatracker.in/story/ncrb-pocso-cases-increased-by-30.8-in-last-five-years>

⁴ <https://timesofindia.indiatimes.com/city/agra/maximum-number-of-pocso-cases-22-registered-each-day/articleshow/105739493.cms>

⁵ <https://www.thequint.com/gender/ncrb-annual-report-2023-crimes-against-women-children-rape-pocso-latest-news>



⁶ Shows the increasing trend of POCSO Cases in India with the trend only going on the higher variation by almost 30.8%.



⁷ Reflects the distribution of POCSO cases across different states, highlighting regions with higher incidence rates and variations in reporting and prosecution.

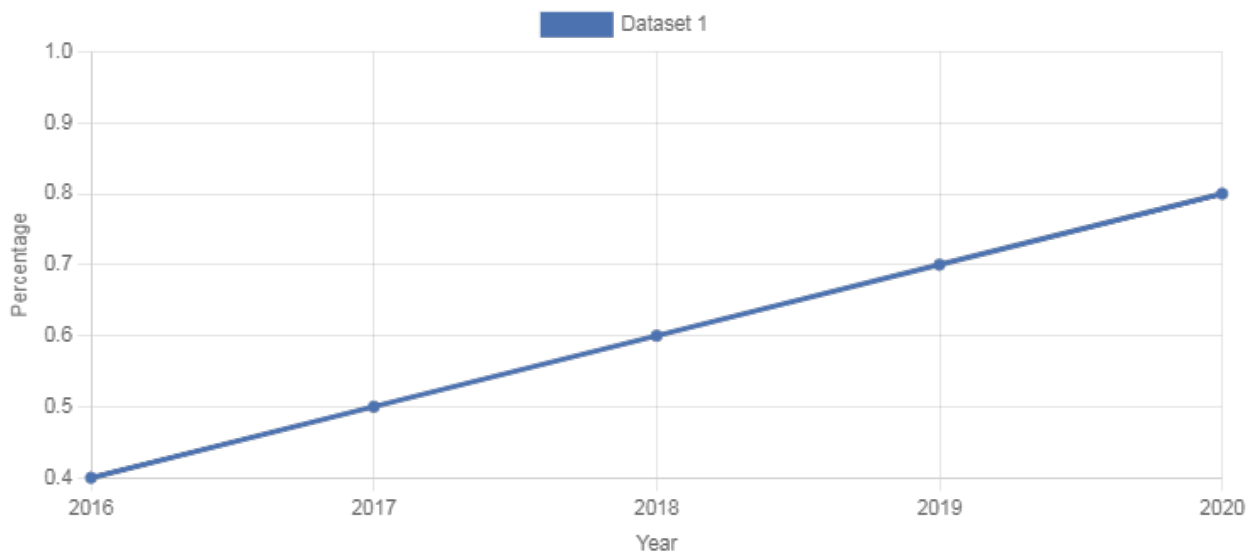
Similarly, UNICEF data on POCSO cases in India statistics report that child sexual abuse has reached epidemic proportions in India, with 53,874 cases registered under the Protection of

⁶ <https://www.indiatracker.in/story/ncrb-pocso-cases-increased-by-30.8-in-last-five-years>

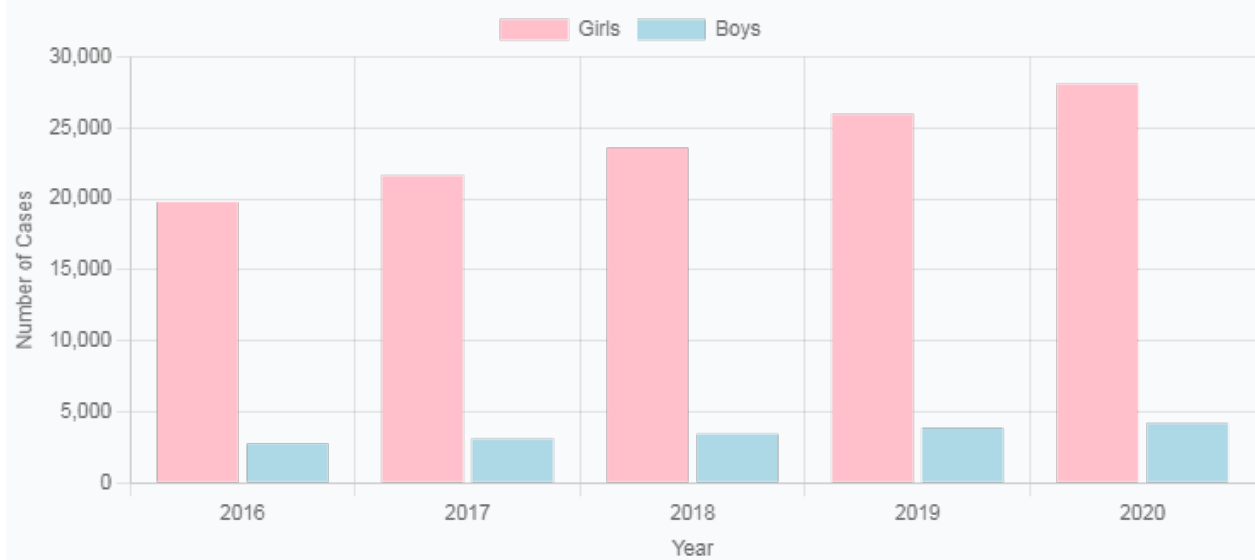
⁷ <https://timesofindia.indiatimes.com/city/agra/maximum-number-of-pocso-cases-22-registered-each-day/articleshow/105739493.cms>

Children from Sexual Offences Act of 2012 in 2021⁸. The Protection of Children from Sexual Offences Act, 2012, describes various forms of sexual offenses against children under 18 years old, including sexual assault, harassment, and pornography⁹. Child rape cases, including penetrative assaults, increased by 96% from 2016 to 2022 due to higher reporting, totaling 19,765 incidents. The prevalence of child sexual abuse in India varies between 4% to 66%¹⁰.

Estimated Percentage of Children Below 18 Facing Sexual Assaults in India



Sexual Abuse Cases: Girls vs Boys in India



⁸ <https://www.unicef.org/india/what-we-do/child-protection>

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8445113/>

¹⁰ <https://economictimes.indiatimes.com/news/india/child-rape-cases-soar-by-96-per-cent-from-2016-to-2022-due-to-higher-reporting-cry-analysis/articleshow/107202636.cms?from=mdr>

CHAPTER 3.2 COMPARATIVE ANALYSIS

Child protection laws are fundamental to ensuring the safety and welfare of children worldwide. In India, the Protection of Children from Sexual Offences (POCSO) Act, 2012, stands as a crucial legislation specifically addressing sexual offenses against children, consequently ensuring protection of their rights. It emphasizes the establishment of special courts and child-friendly procedures aimed at delivering justice while safeguarding the dignity of child victims. According to legal scholar Ashok Agarwal, "The POCSO Act represents a significant step towards ensuring that children are protected from heinous crimes and receive justice in a sensitive manner."

India:

In India, the Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, specifically targets sexual offenses against children. This legislation defines a range of abuses including penetrative and non-penetrative acts, sexual harassment, and the use of children for pornographic purposes. The POCSO Act imposes strict punishments such as imprisonment and fines on offenders and mandates the establishment of special courts for expediting trials. Emphasizing sensitivity towards child victims, the Act outlines child-friendly procedures for investigation and trial to minimize trauma. It also ensures the protection and support of child witnesses throughout legal proceedings. Additionally, the POCSO Act prioritizes the rehabilitation and social reintegration of child victims by providing access to counseling, medical care, and educational support.

USA:

In the United States, the child protection laws operate under a state-by-state framework, lacking a singular federal equivalent to India's POCSO Act. Federal laws like the Victims of Trafficking and Violence Protection Act and the Adam Walsh Child Protection and Safety Act address aspects of child sexual abuse and exploitation, but each state determines its statutes and regulations concerning child protection. Another of many acts is the Child Abuse Prevention and Treatment Act (CAPTA) covers a broader range of issues related to child abuse and neglect, including physical abuse, neglect, emotional abuse, and sexual abuse. Definitions of child sexual abuse and related offenses vary across states, encompassing acts like sexual assault, molestation, exploitation, and exposure to sexual material. Penalties for offenders in

the U.S. range widely, potentially including imprisonment, fines, mandatory counseling, and registration as sex offenders under state-specific legislation such as the Sex Offender Registration and Notification Act (SORNA).

In the U.S., efforts to protect child victims during legal proceedings include specialized units within law enforcement and child protective services, as well as child advocacy centers designed to handle cases of child sexual abuse sensitively. Support services available to victims in the U.S. may encompass counseling, medical care, victim advocacy, and access to educational and social services tailored to meet the needs of child survivors. While reporting requirements and awareness campaigns vary by jurisdiction, initiatives are undertaken nationwide to educate the public and law enforcement about recognizing and reporting instances of child sexual abuse, thereby fostering a protective environment for children across diverse legal landscapes.

United Kingdom:

As noted by legal expert Emma Franklin, "The UK's approach places paramount importance on ensuring that every decision made regarding a child considers their well-being above all else." In the United Kingdom, child protection laws and frameworks provide a comprehensive approach to safeguarding children from sexual offenses, although they differ significantly from both the POCSO Act in India and the state-based system in the United States. The UK's laws, such as the Children Act 1989 and subsequent revisions, establish a legal framework for child protection that addresses a broad spectrum of risks children may face, including sexual abuse. Definitions of offenses related to child sexual abuse in the UK encompass a range of acts, similar to those in the US, such as sexual assault, exploitation, and exposure to sexual material, with legal definitions and penalties set out in criminal law. Penalties for offenders in the UK can include imprisonment, fines, and, like the US, registration on the Sex Offenders Register. The UK's approach emphasizes multi-agency cooperation and coordination, involving social services, law enforcement, health services, and educational institutions to protect children and provide support to victims and their families.

Support services for child victims in the UK are comprehensive and may include therapeutic counseling, medical care, victim advocacy, and access to educational and social services tailored to their needs. The UK also places a strong emphasis on prevention, with initiatives

aimed at raising public awareness, educating professionals, and promoting early intervention to identify and address risks to children. Reporting mechanisms are well-established, with mandatory reporting requirements for professionals working with children and efforts to encourage reporting from the public to safeguard vulnerable children effectively.

Conclusion:

In conclusion, while each country has made strides in child protection, there is ample room for mutual learning and improvement. By adopting best practices from international counterparts and tailoring them to fit local contexts, India can strengthen its legal and social framework to better protect children from harm and ensure their holistic development. Despite the differences, all three countries share a commitment to safeguarding children, promoting awareness, and ensuring justice for victims of these heinous crimes within their respective legal and societal contexts.