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Dr. Puspanjali Mallick
Assistant Professor,
Department of Political
Science, S.C.S (A) College,
Puri, Odisha, India

Comparative analysis of the POCSO Act with international child protection laws: Lessons and Suggestions

Dr. Puspanjali Mallick

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Abstract

This paper provides an extensive comparative analysis of the Protection of Children from sexual offenses (POCSO) Act 2012, in India with child protection laws from selected countries including the United Kingdom, United States, Australia, and Canada. The Study evaluates the gaps in the POCSO Act concerning key aspects such as legal definitions, procedural safeguards, victim support systems, and penalties and explores how international frameworks address critical issues like age differentiation, multi-agency victim support, and online child sexual exploitation. This Paper offers key suggestions such as multi-agency enhancing digital safety provisions, adopting multi-agency approaches, and incorporating age-specific protection to improve child protection in India.

Keywords: POCSO act, child protection laws, sexual offences, international law, child rights, legal comparison, suggestions

Introduction

A Child is the most precious creation of God who is immature, innocent, and dependent on others. Every individual goes through this stage. Also, the future of any nation hinges on nurturing of the children. The problem of children is a global phenomenon and it is the responsibility of nations is to provide safe, secure, and favorable environment for the good growth of children. Legally, a child is often defined as a person under a specific age, usually 18, depending on the country. In the year 1989, the United Nations Convention on the Rights of the Child defines a child as an individual who has attained the age of 18 years and exclusively mention child rights. Under the terms of this convention, the government are needed to fulfill children's basic desires and facilitate them to reach their potential. However, the primary objective behind this is to acknowledge each child's primary rights:

- Life, survival and development
- Protection from violence, abuse, or neglect
- An education that permits youngsters to fulfill their potential
- Be raised by or have a relationship with their folks
- Express their opinion and be listened to

In India, different laws define "child" and "minor" differently. According to the Child Labor Prohibition and Regulation Act, of 1986, defined a child is a person who has completed 14 years of age. Likewise, the POCSO Act is a gender-neutral legislation that defines a child as any individual below 18 years which protects all children from sexual abuse. Every child faces various major issues in society like educational issues, health issues, survival issues, child labor, violence, and abuse for which they require specific attention and protection. Concerned about the violence and abuse of children in India, the Indian Government acknowledged the need to protect children from sexual abuse and it enacted the POCSO Act in 2012. It is a comprehensive law that aims to provide a legal framework to focus on sexual offenses against children. It was enacted to provide stringent punishment for offenders which establishes a child-friendly judicial procedure and ensures that children are not re-traumatized during legal proceedings.

Despite of progressive framework, the POCSO Act faces significant challenges in implementation, particularly in rural areas addressing digital threats like online child

Corresponding Author:
Dr. Puspanjali Mallick
Assistant Professor,
Department of Political
Science, S.C.S (A) College,
Puri, Odisha, India

exploitation, and addressing root causes of child sexual abuse. By comparing the POCSO Act to International child protection laws, this paper seeks to identify lessons that India can adopt to further strengthen its legal system and save its children from abuse.

Methodology

This paper employs a comparative legal analysis of child protection laws in India, United Kingdom, the United States, Australia and Canada. An analysis of legal statutes, academic research, government reports and case studies was conducted to compare provisions of each laws. The study focused on age specific legal protection, online exploitation, victim support, and multi-agency collaboration and enforcement mechanisms. Through its comparison, the paper identifies best practices from international systems that can be applied to improve the POCSO Act and its implementation in India.

Literature Review

Since the enactment of the POCSO Act in 2012, comprehensive research has been conducted particularly regarding its strength in addressing child sexual abuse in a gender-neutral and comprehensive manner. However, existing literature often reveals the gaps in the law's implementation, rural reach, and its potential to handle digital child exploitation. Most research has addressed on the Act's application in urban areas, neglecting rural challenges where access to justice is often delayed.

Internationally, Child protection laws have advanced in response to the changing nature of threats against children, including sexual exploitation, abuse by persons of trust, and online grooming. Advanced legal provisions of Australia, the UK, Canada, USA, highlight particularly the use of multi-agency collaborations and digital safety laws like Mash (Multi-Agency Safeguarding Hubs) and Children's Advocacy Centres (CACs). These jurisdictions have increasingly acknowledged the significance of victim support systems and differentiated age protections, offering lessons for India's legal framework.

Comparative Analysis

The POCSO Act (India)

The POCSO Act is designed to provide comprehensive legal protection to children from sexual offences. It prohibits a wide range of sexual acts against minors, including sexual harassment, pornography, and sexual assault. It provides for Child-friendly judicial procedures to ensure the psychological well-being of victims during the trial, such as in-camera trials, the presence of a support person for the child and the appointment of special public prosecutors. Prior to the implementation of POCSO Act, child victims of sexual abuse had limited legal protections under the Indian penal Code (IPC), which lacked provisions customized to the unique needs and vulnerabilities of Children. The POCSO Act fills this gap by providing a complete framework to deal with various forms of sexual abuse against children in a manner that ensures their safety, dignity, and well-being.

Purpose of the POCSO act

1. Child-friendly Procedures: One of the key purposes of the POCSO Act is to ensure that the legal process is child-friendly and minimize the trauma faced by the

Victims. The Act mandates special courts for speedy trials, child-friendly mechanisms for recording evidence, and procedures for preventing the child from facing intimidation during trials.

- 2. The Rehabilitation and Compensation Act:** Includes provisions for immediate medical examination and treatment for the child victim, as well as Psychological assistance and rehabilitation. It also provides for compensation to be awarded to the victim for physical and mental harm caused by the abuse.
- 3. Fast-track judicial process:** To ensure that justice is delivered promptly, the Pocso Act mandates the establishment of special courts that deal exclusively with cases of child sexual abuse. These courts are required to complete the trial within a year of the offense being reported, ensuring speedy justice.
- 4. Gender-Neutral Protection:** Unlike many previous laws, the POCSO Act is gender -neutral meaning it applies to both boys and girls ensuring that the law addresses sexual abuse against any child, irrespective of gender.
- 5. Comprehensive Legal Framework:** The POCSO Act is designed to provide a structured legal framework that criminalizes a wide range of offenses including penetrative and non-penetrative sexual assault, sexual harassment, and child pornography. The law covers offences by any person regardless of gender, against any child under the age of 18 years.
- 6. Mandatory the Act places an obligation on every individual including parents, teachers, and medical professionals to report incidents of child sexual abuse. Its failure can result in legal consequences, thus emphasizing the collective responsibility of society to protect children.**

Studying child protection laws, particularly in the context of the POCSO Act, is of massive relevance for several grounds

- 1. Enhancing legal awareness and implementation:** Particularly the Pocso Act, increases legal awareness and ensures that cases of child sexual abuse are reported, investigated, and prosecuted effectively. This is especially important in rural and underprivileged areas, where awareness of legal rights is often low.
- 2. Understanding the gaps in legal frameworks:** Studying child protection laws, particularly in comparison to international child protection frameworks allows for a critical examination of the gaps in the POCSO Act and provides a basic for policy reform. Learning from the experiences of other countries can help to identify best practices and implement changes that enhance the effectiveness of the Act in protecting children
- 3. Facilitating policy reforms:** However, despite these provisions, the implementation of the Act has been inconsistent, particularly in rural areas, where legal infrastructure is weaker and cases are often delayed. Moreover, the digital dimension of child abuse is under addressed in POCSO, given the rapid rise in online exploitation cases. There is also no differentiation in legal treatment based on the age of the victim, unlike in countries such as the UK and USA.
- 4. Promoting public awareness and mandatory reporting:** Studying the Act helps to spread awareness

about mandatory reporting obligations and ensure that more cases are reported, investigated, and well-informed public plays a crucial role in preventing abuse and providing children with safer environments.

5. **Enhancing Multi-Agency coordination:** By studying protection laws, especially those with multi-agency approaches like the children's Advocacy centers in the USA or Mash units in the UK, professionals can develop strategies to improve coordination among framework. This is critical in ensuring that victims receive holistic support from medical treatment and counselling to legal justice.
6. **Improving victim rehabilitation and compensation:** Studying protection laws can highlight the importance of victim services, ensuring that legal provisions for rehabilitation are adequately funded and implemented. It can also help advocates push for improvements in the compensation process, ensuring timely and fair compensation for victims.
7. **Combating online sexual exploitation:** Studying child protection laws, particularly in relation to digital threats, helps policy makers and legal professionals understand how to digital threats, helps policymakers and legal professionals understand how to extend the POCSO Act to cover cybercrimes and protect children in the digital sphere.
8. **Addressing the Unique Vulnerabilities of Children:** Studying POCSO Act and other child protection laws helps legal professionals, social workers, educators, and policy makers to better understand these vulnerabilities and create supportive environments where children are protected from abuse.

Purpose of the POCSO Act

1. **Comprehensive legal framework:** This Act is designed to provide a structured legal framework that criminalises a wide range of offences including penetrative and non-penetrative sexual assault, sexual harassment, and child pornography. This law covers offences by any person, regardless of gender, against any child under the age of 18 years.
2. **Mandatory reporting:** The Act places an obligation on every individual including parents, teachers, and medical professionals, to mandatorily report incidents of child sexual abuse.
3. **Child-friendly procedures:** The Act mandates special courts for speedy trials, child friendly mechanism for recording evidence, and procedures for preventing the child from facing intimidation during trials.
4. **Gender-Neutral Protection:** This Act applies to both boys and girls, ensuring that the law addresses sexual abuse against any child, irrespective of gender.
5. **Fast-Track judicial Process:** The POCSO Act mandates the establishment of special courts that deal with cases of child sexual abuse. These courts are required to complete the trial within a year of the offense being reported, ensuring speedy justice.
6. **Rehabilitation and compensation:** The Act includes provisions for immediate examination and treatment for the child victim, as well as psychological assistance and rehabilitation. It also provides for compensation to be awarded to the victim for physical and mental harm caused by the abuse.

Limitations

1. The POCSO Act has limited provisions for addressing online grooming and pornography.
2. Data from NCRB 2022 shows that over 40% of reported cases under POCSO are from rural areas, but only 20% of those cases result in timely conviction due to lack of judicial infrastructure.

Comparing the POCSO Act of India with child protection laws in the UK, USA, Australia and Canada to identify strengths, weaknesses, and lessons for improving India's child protection system.

1. United Kingdom (sexual offences Act, 2003)

The UK's Sexual Offences Act offers comprehensive protection, with age-differentiated provisions that categorize offences based on whether the victim is under 13, between 16 or between 16 and 18. It includes provisions for protecting children from exploitation by those in position of trust.

Innovation

- **Multi-Agency Safeguarding Hubs (MASH):** These hubs coordinate between police, healthcare, and social services, ensuring that child victims receive integrated support. Studies have shown MASH units reduce the trauma experienced by child victims by providing a unified response to abuse cases (NSPCC, 2019).
- **Independent sexual Violence Advisors (ISVAs):** These professionals offer continuous legal and emotional support to victims throughout the judicial process.

2. The United States (Federal and state Laws)

In the United States, child Protection laws like protect our children Act provide a cohesive framework against child sexual exploitation. The age of consent varies by state but typically falls between 16 and 18.

Key provisions

- **Children's Advocacy Centers (CACs):** These centers offer a multi-disciplinary approach to child protection, providing forensic interviews, medical exams, and therapeutic support in one location. (Daly, 2014).
- **Amber Alert System:** This rapid response system has proven effective in locating missing children. Data from the Department of Justice shows that the Amber Alert has helped recover over 1000 abducted children since its inception in 1996.

3. Australia (Criminal Code Act, 1995)

Australia's Criminal Code includes strong provisions against online grooming, child pornography, and child sex tourism. The country is a pioneer in using digital tools to track and prosecute offenders, particularly through its Online Safety Act.

Key Provisions

- **Online Safety Act, (2015):** This law governs online behavior, with specific provisions for prosecuting individuals who exploit children via the internet. Australia also invests heavily in public awareness campaigns to prevent child exploitation (Australian Institute of Criminology, 2017).

- **Royal Commission into Institutional Responses to Child sexual Abuse:** This commission has led to significant reforms in how institutions handle child abuse cases, resulting in enhanced protection laws.

4. Canada (Criminal Code, 1985)

Canada's Criminal Code offers strong protections against child sexual abuse, particularly through its focus on online child pornography. The Country has been at the forefront of using testimony aids for child victims, including the use of video testimony and support persons during trials.

Key features

- **Psychological Support for Victims:** Canada ensures that victims receive counselling and therapy throughout the judicial process to avoid re-traumatization. This has been crucial in maintaining child well-being during lengthy trials (Criminal Code of Canada, 1985.)

Lessons from International Child Protection Laws

1. **Age-differentiation in legal protection:** Countries like UK and the USA have legal frameworks that differentiate based on the victim's age. This ensures that younger children receive more intensive support and protection, recognizing their vulnerability.
2. **Strong digital child protection Laws:** Australia's Online Safety Act and Canada's emphasis on online child pornography prosecution provide clear pathways for protecting children from online exploitation. India's POCSO Act needs similar updates to address the growing threat of online child sexual exploitation.
3. **Special Provisions for children for children in rural areas:** International models focus on ensuring that even remote areas have access to specialized legal and support systems. India needs more investment in rural legal infrastructure to reduce delays and increase conviction rates under the POCSO Act.

Suggestions

1. **Incorporate age-differentiated protections:** India should adapt age-specific protections within the POCSO Act, recognizing that younger children need more robust safeguards than adolescents.
2. **Improve Rural legal infrastructure:** India must invest in strengthening legal and judicial infrastructure in rural areas to reduce delays in justice delivery and ensure timely investigations and convictions.
3. **Implement multi-agency collaboration:** India can benefit from establishing multi-agency hubs similar to the UK'S MASH units, integrating police, social services, and healthcare professionals to provide coordinated responses to child abuse.
4. **Strengthen digital child protection laws:** The POCSO Act must be amended to include comprehensive provisions on online child sexual exploitation, learning from Australia and Canada's robust digital protection frameworks.

Conclusion

Child Protection is an area that requires constant adaptation and strengthening of legal frameworks to address emerging challenges. The POCSO Act is a significant step in stepping children from sexual abuse in India, but it requires further

reforms to address challenges related, there are also significant lessons to be learned from international child protection laws. By incorporating best practices, such as age-differentiated protections, Multi-agency collaboration and stringent provisions against online exploitation, India can further strengthen its child protection system and ensure better legal outcomes for victims.

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