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## **EFFECTIVENESS OF THE POCSO ACT IN SECURING JUSTICE FOR CHILD VICTIMS: A CRITICAL ANALYSIS**

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### **ABSTRACT**

In order to address rising cases of child sexual exploitation in India Protection of Children from Sexual Offences Act, 2012 also known as POCSO Act, came into being as a legislative tool. The act provided for a specialized legal framework to protect children from various forms of sexual violence using child friendly investigative processes, specialized courts, mandatory reporting and stringent punishment. After more than a decade since implementation of act several legislative and judicial efforts have been made to enhance investigation and prosecution of child sexual abuse cases in India. Despite all such efforts, it is yet uncertain whether provisions contained in act have succeeded in providing justice to victims of child sexual exploitation. The current paper attempts to critically analyze legal provisions, objectives and principles of POCSO Act.

**Keywords:** POCSO Act, Child Sexual Abuse, Child Protection, Child Rights, Special Courts, Access to Justice, Criminal Justice System.

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## **Introduction**

The problem of child sexual abuse can be viewed among most shocking types of abuse, which represents a severe breach of basic children's rights, respect for their dignity and their own bodies. Moreover adverse effects of sexual abuse of a child extend further than just physical pain that he or she may endure. It has been proved in numerous research papers that sexual exploitation victims are likely to develop different disorders in areas of psyche, behavior, socialization and education even when growing up.<sup>3</sup>

India for decades had no specific law in its statute book that dealt with sexual offences committed against children. Until year 2012 cases related to sexual abuse of children were handled by applying provisions of Indian Penal Code of 1860. Although these provisions provided penalties for any acts of sexual immorality they failed to acknowledge inherent vulnerability of victims and hence lacked specific provisions related to investigating such crimes, trying offenders and helping victims. Consequently affected minors had to go through ordeal of law process which only served to worsen their suffering. However with growing knowledge of child sexual abuse and scientific studies proving high incidence of child abuse throughout nation need for such a law was felt.<sup>4</sup>

The coming into force of Protection of Children from Sexual Offences Act, 2012 was thus an important achievement for child protection in India. As law attempted to create a specialized legal instrument with adequate capacity to deal with issues connected with sexual abuse of children while ensuring dignity and respect for latter during process of criminal procedure. Differentiating itself from other laws previously enacted in country POCSO Act was characterized by its approach centered on children combining both substantive criminal law and procedural measures designed for well being of child victims.<sup>5</sup>

The importance of legislative enactment is not only associated with its legal aspects. Rather enactment of POCSO Act can be seen as part of broader social recognition of need to provide greater protection to children against sexual crimes. Thus through its framework Act attempted

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<sup>3</sup> Arun Kumar Singh et al., Justice for Voiceless: Evaluating Efficacy of Criminal Justice Mechanisms in Combating Child Sexual Abuse, 6 *J. Int'l Com. L. & Tech.* 566 (2025).

<sup>4</sup> Shailesh Kumar, Access to Justice and Sexual Violence Against Children in India: An Empirical Study of Reforms Under the POCSO Act 2012 (2022) (Ph.D. dissertation, University of London).

<sup>5</sup> Prayag Kumar Paswan & Sandeep Kumar, The Protection of Children from Sexual Offences Act, 2012 (POCSO Act): An Overview, 1 *Motherhood Int'l J. Res. & Innovation* 59 (2024).

to find right balance between goals of punishment, deterrence, protection of victims, rehabilitation and procedural justice. As such POCSO Act represents a core element of current debates on children's rights and access to justice in India.<sup>6</sup>

### **Conceptual Understanding of Justice for Child Victims**

Justice in cases of child sexual abuse goes far beyond traditional notion of punishment of offenders. While ensuring conviction and sentencing of offenders is crucial child centred justice requires consideration of other key factors such as protection, participation, recovery and empowerment. Often children who are victims of sexual abuse face various psychological obstacles which hinder their participation in legal proceedings. Thus assessment of success of legal procedures should focus not only on their legal consequences but also on way process unfolds for victimized child.<sup>7</sup>

Involvement in justice by children who have been sexually abused implies a number of factors. It can be associated with freedom to report offences respectful treatment by law enforcement agencies, participation in trials, speedy adjudication and accessing all resources required for recovery. The legal system based only on punishment of offenders and disregarding these elements cannot be considered as an adequate response to child victims needs. As a result contemporary child protection systems pay great attention to developing victim focused models of justice aimed at minimising secondary victimization and protecting children's interests.<sup>8</sup>

The principles underlying POCSO Act have been incorporated through adoption of child friendly processes and specialized institutions that would minimize harm suffered by children and make them participate. It is evident therefore that this statute is an attempt to change traditional criminal justice system which focuses on adversary system to one that is more concerned with special needs of child victims. In assessing its effectiveness therefore substantive justice must be taken into consideration along with procedural justice.<sup>9</sup>

### **Legislative Background and Evolution of POCSO Act**

The coming into existence of POCSO Act needs to be seen against backdrop of State's duties

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<sup>6</sup> Sweety Pandey & Parishkar Shreshth, Justice for Minors: Evaluating Implementation and Efficacy of POCSO Act, 2012, 4 J. Legal Res. & Juridical Sci. 655 (2025).

<sup>7</sup> Kumar, *supra* note 4.

<sup>8</sup> Id.

<sup>9</sup> Id.

under constitution and international commitments towards protecting children. Several provisions in Constitution of India reflect duties of State with regard to children. The State is given permission under Article 15(3) to make special provisions for children and under Articles 39(e) and 39(f) State is called upon to protect children from all forms of exploitation and provide them with opportunities and facilities to develop in a healthy manner.<sup>10</sup>

Internationally India became a party to United Nations Convention on Rights of Child (UNCRC) in 1992. According to Convention each State party is required to take all legislative, administrative and other appropriate measures to protect children from any form of sexual exploitation or sexual abuse. Due to lack of an adequate domestic legislation to deal with cases of child sexual abuse there existed a gap between India's international obligations and its domestic legislation. Hence it becomes imperative to fill this void through enactment of POCSO Act.<sup>11</sup>

The increased awareness about child sexual abuse as a social issue also contributed towards increasing need for legal reforms. Researches carried out by government bodies showed disturbing number of sexual abuses among children from various socio economic backgrounds. This showed that there was a need for new and specific laws to counter this form of crime. POCSO act is one such legislation which was developed to counter issue of child sexual abuse.<sup>12</sup>

### **Objectives and Salient Features of POCSO Act**

The primary aim of POCSO Act is to provide full protection to children from acts of sexual assault, sexual harassment and pornography while maintaining child friendly procedures in criminal justice process. Under Act, "child" refers to any individual under age of eighteen and protection applies regardless of gender. It is important to note that Act is non discriminatory with regards to gender which is one of its most progressive elements.<sup>13</sup>

The legislation identifies different types of offences committed against children such as penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment and child pornography. Through categorisation of offences

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<sup>10</sup> INDIA CONST. arts. 15(3), 39(e), 39(f).

<sup>11</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>12</sup> Paswan & Kumar, *supra* note 5.

<sup>13</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, s. 2(d) (India).

Act ensures a balanced response through imposition of penalties for offence.<sup>14</sup>

In addition Act contains provisions for mandatory reporting of offences against children. Where anyone is made aware of sexual offences committed against a child such an individual is bound by law to report case to concerned authorities. The requirement of mandatory reporting is based on legislative objective of not concealing offences against children.<sup>15</sup>

Creation of Special Courts is yet another innovation brought by this act. The aim of special courts is to allow swift dispensation of case without exposing children to any intimidating process. This act provides for anonymity of child victim. This ensures that during investigation and trial, minimal damage will be done. Overall all these innovations have been made with aim of protecting dignity of children while prosecuting their offenders.<sup>16</sup>

### **Child Friendly Justice under POCSO Framework**

Among other distinctive features of POCSO Act, special mention can be made of its approach towards delivering child friendly justice. Criminal proceedings typically take place in an environment that is alien threatening and emotionally traumatizing. This may dissuade participants in process from becoming involved in it and may intensify their psychological pain. In order to avoid such situations POCSO Act makes provisions for introducing safeguards within process of law that could make situation easier for child victims.<sup>17</sup>

The officers responsible for handling cases under POCSO Act should follow practices that would be psychologically favorable to victim child. Statements have to be recorded in such a manner that would cause minimum stress to child. Medical tests should be performed in respect for child's dignity. The conduct of special courts in hearing case should also be done in such a way that child feels protected from any form of confrontation. Such an approach to legal proceedings corresponds to therapeutic jurisprudence.<sup>18</sup>

This focus on importance of child sensitive processes is also an indication of a wider trend in theories of access to justice. Modern studies of law have increasingly come to appreciate

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<sup>14</sup> Id. chs. II - III.

<sup>15</sup> Id. ss. 19–21.

<sup>16</sup> Id. ch. VIII.

<sup>17</sup> Anuj Gandhi, Investigation Process Under POCSO Act: Legal Provisions Governing Investigation, 4 Int'l J. Hum. Rts. L. Rev. 1185 (2025).

<sup>18</sup> Kumar, *supra* note 4.

importance of assessing justice based not only on results but also experience of participants in process of law. Through prioritizing well being of children and minimizing procedural stress POCSO Act strives for consistency with modern notions of children's rights and human dignity.<sup>19</sup>

### **Research Problem and Scope of Study**

However despite progressive features of POCSO Act, there is still much controversy surrounding its effectiveness in practice. While increase in reports of cases and introduction of specialized legal procedures have been observed many problems persist in areas of investigations, prosecutions, conviction rates, forensic services, judicial processes and victim recovery. Such issues pose several questions about whether Act has indeed managed to achieve its primary goal of providing justice to victims.<sup>20</sup>

Thus, current study aims to conduct a critical analysis of effectiveness of POCSO Act through a review of legislation itself and its implementation in practice. This will be achieved through an assessment of effectiveness of legislation at providing access to justice and protecting rights of child victims. Such an approach will allow not only identification of positive aspects of legislation but also its shortcomings thus informing future discussion of child protection legislation in India.

### **Implementation of POCSO Act and Quest for Justice**

The passage of Protection of Children from Sexual Offences Act, 2012 was a landmark moment in legislative history of India in regard to tackling child sexual abuse by developing a separate law for same. However real test of efficacy of POCSO Act is not in what it entails as legislation, but in how it operates in practice. The provisions of a law may be well thought out, but if agencies meant to enforce provisions do not have capability to enforce law then it cannot fulfill its intended objective. Thus any analysis of POCSO Act will have to go beyond just legislation.

There is no denying fact that there have been considerable changes in institutions attitudes towards child sexual abuse in last ten years thanks to passage of this act. There has been an increase in reporting of crimes more public awareness about them and certain special measures

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<sup>19</sup> Id.

<sup>20</sup> Pandey & Shreshth, supra note 6.

have come into place concerning their investigation and prosecution. Through this act an offender focused attitude has been transformed into one which focuses on victim protection and wellbeing. Nonetheless there remain many obstacles before every victimized child is able to receive justice through criminal process.<sup>21</sup>

The implementation of POCSO Act is also part of wider picture of access to justice. It is not merely about availability of legal redress but about people's ability to use them to their advantage. In cases involving child sexual abuse access to justice would mean that individuals can report crimes, participate in investigation process without any intimidation and get proper protection from threats timely justice and rehabilitation facilities. The POCSO Act makes provision for such purposes but issue of how effective these measures are will be an important consideration when assessing effectiveness of Act.<sup>22</sup>

### **Investigation under POCSO Act: Child Friendly Procedures and Practical Challenges**

The investigation process serves as bedrock of criminal justice administration considering impact that evidence gathered during process can have on final outcome of proceedings. Acknowledging fact that children are vulnerable POCSO Act provides for a special process of investigation aimed at ensuring minimal psychological harm to child while promoting their cooperation in process. In line with spirit of Act it is mandatory for police officers to conduct themselves in a respectful and sympathetic manner when recording statements of children.<sup>23</sup>

This aspect of law clearly distinguishes itself from conventional practice followed in field of criminal investigations wherein victims are subject to an intimidating environment and cross examination. The inclusion of child sensitive methods of conducting an investigation by POCSO Act acknowledges fact that children have special attributes that need to be considered while conducting legal proceedings against such offenders. This demonstrates emphasis placed on protecting emotional integrity of child during process.<sup>24</sup>

Even with such legislative measures in place however there may be challenges in practice. For instance despite provisions for specialized investigation of crimes against children many police

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<sup>21</sup> Id.

<sup>22</sup> Shailesh Kumar, Access to Justice and Sexual Violence Against Children in India: An Empirical Study of Reforms Under the POCSO Act 2012 (2022) (Ph.D. dissertation, University of London).

<sup>23</sup> Gandhi, *supra* note 17.

<sup>24</sup> Id.

officers lack training in investigating offenses involving children. Work overload, resource shortage and ignorance on psychological implications of child abuse cases may limit effectiveness of investigations. Sometimes a child may be repeatedly interrogated making them relive their traumatic experience. The disparity between legislation and capacity to enforce it is another problem.

Delays in reporting is another key challenge. The crime of child sexual abuse is commonly committed in familial settings or in situations that involve trust and dependency. Victims may be too scared, embarrassed or ashamed to report their victimization due to fear of stigmatization, retaliation or threats from relatives. Such delays affect ability to collect forensic evidence. This makes process of investigation difficult and may limit chances of conviction. Even where there are legal measures such social problems remain a barrier to justice.<sup>25</sup>

### **Mandatory Reporting and Institutional Accountability**

Another unique aspect of POCSO Act is its provisions for mandatory reporting requirements. Sections 19 to 21 of Act state that anyone who comes to know of an occurrence of a sexual assault committed against children must inform concerned authorities regarding same. If this step is not taken one risks being penalised for this inaction. This provision of Act aims to ensure that there is no possibility of any cover up of such acts and prompt action can be taken by relevant agencies.<sup>26</sup>

This mandatory reporting policy has made it possible for greater accountability in institutions. It ensures that schools, hospitals, childcare facilities and other welfare organisations are compelled to take steps in case of any suspicion of abuse. It is important to understand that such mandatory provisions have enabled publicisation of child sexual abuse which was otherwise treated as a private issue. Law enforcement realises that child protection entails more than relying on voluntary actions by victims or their family members.<sup>27</sup>

While that is true there are debates about mandatory reporting within scholarly and practical circles as well. The criticism of mandatory reporting centers on notion that mandatory reporting requirements could sometimes hinder children from reporting their abuse due to fear of facing

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<sup>25</sup> Singh et al., supra note 3.

<sup>26</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, ss 19–21 (India).

<sup>27</sup> Paswan & Kumar, supra note 5.

legal action against their relatives or friends. There have been concerns about how Act would apply to teenage consensual relationships. However mandatory reporting is still one of main strategies used to identify and prevent child sexual abuse cases.

### **Role of Forensic Science in Strengthening Justice**

The rise in significance of forensics in crime investigation has revolutionized modern methods for administering justice. In sexual offences against children, scientific evidence proves to be instrumental in verifying accusations pinpointing culprits and ensuring successful prosecutions. Methods like DNA testing, analysis of biological material, medico legal examinations and digital forensics have been helpful in providing means for better fact finding by criminal justice agencies.<sup>28</sup>

Studies conducted about role of forensics in POCSO cases indicate that presence of scientific evidence in process leads to higher chances of convictions and lesser reliance on oral evidence only. Children who undergo sexual assault find it hard to describe their experience especially after a considerable period has passed since commission of crime. Scientific evidence can help provide objectivity to support a case making convictions easier for judges. In addition use of scientific evidence ensures fairness in process as well.<sup>29</sup>

Notwithstanding its critical significance forensic science in relation to POCSO investigations continues to remain underutilised. There have been numerous instances of delayed evidence collection improper sample preservation and absence of facilities for forensic testing. Officers conducting investigation lack proper training on collecting and preserving scientific evidence. Delayed delivery of forensic reports diminishes efficacy of legal proceedings and prolongs them further. These factors underscore importance of building required forensic capacity in order to achieve goals outlined by POCSO Act.<sup>30</sup>

The results of empirical research suggest that use of forensic evidence should not be viewed as a secondary step during investigations rather it must be considered an inseparable element of access to justice. The application of a criminal justice approach devoid of scientific methods of inquiry compromises both efficacy and precision. Therefore developing forensic capacity

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<sup>28</sup> Gajendra Kumar Goswamy, Role of Forensics in Strengthening Child Rights Under POCSO Act, 2012 (2020) (D.Sc. dissertation, National Forensic Sciences University).

<sup>29</sup> Id.

<sup>30</sup> Id.

becomes an urgent task for improvement of process under consideration.<sup>31</sup>

### **Special Courts and Child Centred Adjudication**

One of key features that have been introduced through POCSO Act is introduction of special courts where offences against children will be tried. This is because conventional criminal courts lack resources and flexibility needed to cater to requirements of child victims. In these special courts children are expected to participate in process of trials without being exposed to any fears and intimidation.<sup>32</sup>

The introduction of special courts also comes amid a change in field of access to justice theory with particular emphasis on procedural justice and therapeutic jurisprudence. It is important to understand that while access to justice does not mean merely providing right decision at end of process but ensuring that all people involved feel that they are being treated with fairness, respect and dignity. For child victims how their participation in trial goes is as much significant as what outcome is.

The POCSO Act has also adopted some special procedures which make it easier for children to participate in legal processes. Testimonies can be given via video link facilities and aggressive cross examination of child witnesses is forbidden. Additional procedures aim to minimize risk of confronting victims with accused persons. The introduction of confidentiality provisions also helps to shield victims from negative social impact of crimes committed against them. This means that special procedures have been introduced to better serve particular needs of child victims.<sup>33</sup>

On other hand, work of POCSO Courts demonstrates their certain inefficiency. Firstly in many cases POCSO Courts are not fully specialized and continue to process ordinary criminal cases. Secondly, there is usually a shortage of qualified personnel both judges and prosecutors as well as of support staff (e.g., counselors). Finally special facilities of such courts such as waiting rooms for victims are usually missing. This fact negatively affects performance of Special Courts.

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<sup>31</sup> *Id.*

<sup>32</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, ch. VIII (India).

<sup>33</sup> *Id.* ss 33–38.

## **Judicial Response and Conviction Trends under POCSO Act**

The judiciary is an important stakeholder which has played an instrumental role in moulding POCSO Act in its present form through various judgments. The courts have ensured that interests of child victims are protected at all costs and have further underscored importance of a child centric approach under Act. It is thus not surprising that a specialized body of law regarding child protection has emerged in India.

One of most common legal questions before courts has been that regarding child testimony. Since sexual crimes are usually committed in private and do not involve any independent witnesses a child's testimony is crucial in proving an accused's guilt. However judicial oversight is imperative in ensuring a fair and reliable verdict. Therefore this question forms crux of many a POCSO case.

The issue of convictions in accordance with POCSO Act is contradictory. Although more and more crimes get reported, tried and registered acquittals occur often in many states. A few reasons explain such a trend including delays in reporting a crime, hostility from witnesses, lack of an investigation, insufficiency in evidence and social pressure upon victims. It is necessary to highlight that only adequate legislation is not enough for ensuring successful trials.<sup>34</sup>

On other hand, rate of conviction does not necessarily prove efficiency of legislative act since it has been effective in terms of creating awareness about problem encouraging population to report on abuses and developing specific mechanisms. All those are key strengths of Act despite its inefficiencies when it comes to success of prosecutions. As such evaluation of legislation should include all its results.

## **Evaluating Effectiveness of POCSO Framework**

The experiences with implementing POCSO Act demonstrate both substantial successes and persistent difficulties. Firstly law has created an integrated legal framework which acknowledges rights and vulnerabilities of children who fall prey to sexual abuse. Using specific offences processes conducive to child friendly justice, mandated reporting

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<sup>34</sup> Samyuktha Ganesan, A Study on Effectiveness of POCSO Act on Child Rape with Special Reference to Chennai, 4 Indian J. Legal Rev. 1134 (2024).

requirements, forensic tools and Special Courts POCSO Act has radically altered India's approach towards addressing child sexual abuse. The Act has helped raise awareness, increase accountability and promote children's rights in criminal justice process.

Secondly, there are practical issues associated with quality of investigations, forensic work, infrastructure problems, procedural delays and victim care that hamper effective implementation of framework. This indicates that legal changes should be supported by improvements within institutions and policy initiatives. Ultimately success of Act is dependent not only on legislative provisions but also on institutional capacity and willingness to implement these provisions.

### **Persistent Challenges in Implementation of POCSO Act**

Although Protection of Children from Sexual Offences Act, 2012 is an act that has been enacted with an array of forward thinking aims and objectives this act still poses a number of problems for effective delivery of justice to victims of sexual offences among children. No doubt passing of a separate law was quite instrumental in making India a country where child protection could be made through medium of law nevertheless efficiency of a law can only be judged on basis of way it is implemented. It should be stated that passage of more than a decade shows that there are still some impediments to achieving objectives set out under POCSO Act.<sup>35</sup>

Under reporting is one of biggest challenges that impede functioning of Act. Sexual abuse of children takes place in environments where there is trust, power and dependency. Most of times, offenders of child sexual abuse are people who know victims, which include family members, relatives, neighbors, teachers and other individuals in positions of influence. In many instances victims are reluctant to report their abuse because of fear of repercussions, stigma and emotions that might arise after reporting crime. The same applies to parents since they might not report an offense for fear of losing their status in society.<sup>36</sup>

The problem of underreporting is intimately related to more wide reaching socio cultural considerations. Conversations about sex and sexual abuse are still taboo in many areas of Indian society. Parents or guardians lack knowledge about signs of sexual abuse while schools may fail to have effective means of recognizing and dealing with victimization among their students.

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<sup>35</sup> Pandey & Shreshth, supra note 6.

<sup>36</sup> Singh et al., supra note 3.

These barriers in social context make it difficult for law enforcement bodies to intervene because they cannot intervene in cases that never come to their notice. Thus even though POCSO Act offers a legal way out for protecting children its efficacy ultimately depends on social acceptability of reporting sexual abuse cases.<sup>37</sup>

### **Procedural Delays and Access to Justice**

The topic of procedural delays is one of most serious problems that can be attributed to enforcement of POCSO Act. The act was formulated to guarantee quick investigation and trial since delays in legal procedures tend to exacerbate trauma endured by child victims. Fast trial processes not only build public trust in criminal justice system but also aid in psychological rehabilitation of victims through closure. Empirical studies however show that delays have persisted in several stages of criminal process such as complaint registration, investigation, forensic investigation, preparation of charge sheet, testimony taking and adjudication.<sup>38</sup>

These delays are caused by several institutional reasons. The police are known to work under conditions of understaffing and high workload that result in poor investigation quality and slow investigation process. The courts dealing with POCSO cases often have large volumes of backlogged cases and a lack of manpower within judicial system. In addition forensic laboratories may have difficulties with processing evidence collected because of underdeveloped facilities and growing demand for their services. Overall sum total of these problems leads to a situation when many cases continue to be unresolved for long periods of time despite legislative requirements.<sup>39</sup>

Problems associated with procedural delays are more serious than mere issues of administrative difficulty. Many child victims may be forced to relive their traumatic experiences multiple times during entire process of case. Procedural delays can cause victims to experience emotional fatigue, poor memory retention and unwillingness to participate in proceedings. The same thing might happen with families who lose faith in law and would no longer have intention to pursue case fully.<sup>40</sup>

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<sup>37</sup> Paswan & Kumar, supra note 5.

<sup>38</sup> Kumar, supra note 4.

<sup>39</sup> Id.

<sup>40</sup> Id.

### **Evidentiary Challenges and Witness Vulnerability**

Evidence gathering in cases of child sexual abuse can be quite problematic. While evidence gathering for other crimes is often based on observations made by external sources sexual abuse is more likely to take place in private spaces where no one else witnesses it taking place. The testimony of child thus becomes crucial form of evidence that courts consider. Despite fact that courts continue to hold that a child's credible testimony alone may suffice for purposes of conviction, problems may arise in practice regarding its assessment.<sup>7</sup>

Children may encounter problems recalling events that took place under stressful circumstances some time ago. Feelings of emotional trauma, fear of accused, social and familial pressures are all liable to play a role in causing inconsistencies in testimonies given at time of trial and investigation. Lawyers representing defendants in court cases will make every effort possible to exploit inconsistencies in order to discredit their client's accusers. This results in great difficulty for children trying to receive justice.

The issue of hostile witnesses and withdrawal of support by family is another matter of consideration. Given that most of perpetrators have a relationship with victim families may be faced with situations where they feel compelled to withdraw their claims. Moreover in some instances victim's dependence on perpetrator economically can also hinder a successful investigation process.

### **Forensic Limitations and Scientific Investigation**

The use of forensic science in investigations of crimes is arguably one of most encouraging aspects of contemporary justice administration. Forensic evidence has potential to bolster criminal cases because such evidence adds objectivity to accusations and reduces need to rely solely on testimonies. Through such techniques as DNA testing, biological analysis, digital forensics and medico legal examinations, investigations may be made more accurate and increase chances of conviction.<sup>41</sup>

A number of studies have been done about involvement of forensic science in investigations involving sexual abuse of children which show that when scientific evidence is used, there is a higher chance of prosecuting offenders successfully. Forensic DNA evidence especially is one

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<sup>41</sup> Goswamy, *supra* note 28.

of most useful tools that investigators can use to confirm suspicions of guilt. Science does not only help to build up cases but also promotes justice.<sup>42</sup>

However despite above benefits use of forensic science in POCSO cases is very sporadic. Investigations still face problems with delayed sample collection, poor preservation of samples, fewer experts in field of forensics as well as delayed sample analysis. Moreover investigating officers are usually not adequately trained on forensic science hence causing missed chances of scientific verification. Poor utilization of forensic science can be considered a major flaw within implementation process.<sup>43</sup>

### **Challenges Relating to Rehabilitation and Victim Support**

Justice for child victims cannot be determined simply on basis of conviction rates and sentences imposed on accused. Sexual exploitation of children has many psychological, emotional and social impacts which require prolonged assistance and support. Therefore it is imperative that rehabilitation forms an important part of an effective child protection strategy. Rehabilitation is taken into account under POCSO Act but its successful implementation is far from consistent in different parts of country.<sup>44</sup>

There are several victims who need counselling, psychiatric care, educational help, health care support and social reintegration programs. However provision of these services differs across different places. Victims are often faced with obstacles when trying to obtain assistance provided by qualified professionals. There is also a lack of trained counsellors, child psychologists and support persons which affects rehabilitation. Therefore whereas criminal justice system can impose appropriate punishment needs of victims will not always be met.<sup>45</sup>

Even compensation arrangements designed to help victims have problems being implemented. Delayed payments and variations in amount awarded usually limit efficiency of such financial arrangements. Since child sexual abuse creates such a big problem in their lives rehabilitation needs to be seen as an important aspect of justice and not just as something extra. Victim services are thus very important when trying to ensure justice.<sup>46</sup>

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<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Ganesan, supra note 34.

<sup>45</sup> Id.

<sup>46</sup> Id.

## **Judicial Developments and Emerging Concerns**

Judicial efforts in interpreting and implementing POCSO Act have been crucial in ensuring that objectives of legislation remain centered on child welfare despite challenges involved. The judicial pronouncements have provided clarifications in regards to requirements and criteria for determining evidence, punishment, confidentiality and other aspects under legislation. Such efforts have been crucial in improving legislation.

Nevertheless judicial practice in regard to implementation of POCSO Act has presented some challenges. One of issues is issue of consensual relationships among teenagers. Under Act anyone below age of 18 is considered a child. Thus any form of sexual contact between two teenagers will constitute a criminal act regardless of consent. There has been an increase in such cases in which it is unclear whether criminalization is appropriate. There are fears that rigidity of applying legislation in such cases may lead to negative outcomes.

A new problem area that has recently developed relates to online child sexual abuse. The advancement in technology has provided criminals a means to engage in grooming activities online exploitation and spreading of pornographic material. Although changes made to POCSO Act have tried to tackle these problems quick development of technology demands that laws change alongside it. It is thus up to whether act can adapt to any new problems arising from technological advances.

## **Recommendations for Strengthening POCSO Framework**

A study of obstacles encountered during implementation highlights necessity for adopting a multi faceted approach towards reforms. Firstly efforts must be focused on awareness and prevention through educational programs within school and community settings educating public about child sexual abuse how to report it and child rights. This will help overcome problem of underreporting and ensure that cases are handled promptly.

Secondly training must be given to law enforcement agencies, prosecutors, judges, doctors and forensic experts dealing with POCSO related cases. The effective implementation of child sensitive procedures calls for both legal knowledge as well as expertise. Thus capacity building exercises must form a constant part of child protection policies in India.

Lastly there needs to be a huge investment in terms of setting up better forensic facilities,

reducing processing time for reports and ensuring that those involved have been trained properly to collect evidence. Scientific evidence must form a part of all child sexual abuse investigations and not remain an exception.

Fourthly POCSO Courts must be bolstered through better infrastructure, sufficient staffing and efficient case management processes. Facilities, counseling and technological support must be made available at all child sexual abuse courts. These measures will go a long way in helping speed up justice delivery for victims.

Lastly it is essential that rehabilitation services be widened and institutionalized. All child victims should be provided counseling, health care, education and compensation without procedural difficulties. Justice cannot be said to be served when victims of abuse do not get help required for rebuilding their lives.

### **Conclusion**

The Protection of Children from Sexual Offences Act, 2012 marks an important milestone in history of evolution of laws on child protection in India. It was formulated as a coherent and child centred set of laws to deal with issue of sexual abuse in terms of special offences special procedures, mandatory reporting requirements, establishment of Special Courts and other features for benefit of child victims. Almost a decade since its passage Act has played a crucial role in changing institutional approaches to child sexual abuse and advancing idea of children's rights under criminal justice.

The results obtained in course of present study show that POCSO Act has managed to achieve considerable success in raising awareness, reporting, accountability and advancing cause of child centred criminal justice. At same time, there are certain difficulties associated with implementation of Act which need to be resolved. These include problems with under reporting, delays in process, evidentiary issues, lack of proper forensic testing and use, deficiencies in infrastructure and ineffective rehabilitation measures.

In conclusion, success of POCSO Act should not only depend on number of convictions, but should also be based on whether law succeeds in providing dignity, protection, participation, rehabilitation and recovery to children affected. Indeed POCSO Act provides for a good foundation for protection of children within India. The next step involves improving enforcement process such that all sexually abused children receive justice.

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