

# POCSO Act

## [UPSC Notes]

### What is POCSO act?

The POCSO Act was an important step towards creating a safer environment for the children of our country, it was adopted to protect children from sexual offences like acts of sexual harassment and assault along with child pornography. This act asks for the setting up of Special Courts that are better equipped to deal with such offences in a more effective manner.

This Act has been amended in 2019 to make better provisions that will help to accommodate swift justice in the form of enhanced punishments for several offences. This has been undertaken with the objective of deterring the perpetrators and hence, ensuring the safety of a secure and dignified childhood.

Some important facts about the POCSO Act have been discussed below:

POCSO Act Full-Form	Protection Of Children from Sexual Offences Act
POCSO act year	2012
What does POCSO act stand for?	An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for the establishment of Special Courts for the trial of such offences and for matters connected therewith or incidental thereto.
The POCSO act defines a child as any person below	The age of protection under the POCSO act is under 18 years.
Minimum punishment provided under POCSO act 2012	Minimum punishment under the POCSO Act is 10 years.

### Latest Update on POCSO Act

There has been a split verdict on an issue recently brought to the Supreme Court of India. The issue is to decide if Section 155(2) of the Code of Criminal Procedure (CrPC) shall pertain to the inspection of a crime under Section 23 of the POCSO Act of 2012.

The 2-judge bench has given a split ruling on the grounds mentioned below:

- According to section 155(2) of the CrPC, a police officer is not authorised to hold an investigation into a non-cognizable offence. If this is to be done, he/she would require an order from the Magistrate.
- Section 23 of the POCSO act identifies the disclosure of a victim's identity (that of sexual abuse) to be an offence.

The judges are in a fix because one of them feels that the disclosure of the victim's identity will be in fundamental breach of the rights the child extends- a right to not be embarrassed.

## Importance of POCSO Act 2012

India has one of the biggest populations of children under 18 years of age- the estimated number was found to be around 472 million in the last census that happened in 2011. The extension of protection to this naturally vulnerable population is of primary importance in the working of the country.

The protection of children is one of the guarantees that the State must abide by if Article 21 is considered carefully. India is also a signatory of the UN Convention on the Rights of the Child. Hence, special laws need to be put into effect to safeguard children's interests and their innocent childhood in the best possible way.

The constitution, before the POCSO Act came into effect, was grossly inadequate to deal with sexual offences against children. The only act that mentioned a specific part about child abuse was the Goa Children's act of 2003. All sexual offences and misdoings against children were processed under these sections of the Indian Penal Code (IPC):

- I.P.C. (1860) 377- Unnatural offences
- I.P.C. (1860) 375- Rape
- I.P.C. (1860) 354- Outraging the modesty of a woman

There was a lack of laws that especially catered to the best interest of the children as this approach had its fair share of drawbacks. It had several loopholes that prevented the proper and effective care to protect the child, like;

- IPC 375 does not protect male victims from sexual offences involving penetration.
- The word 'modesty' is vaguely ambiguous in terms of definition in the constitution. Hence, its violation carries little weight in terms of a penalty as it does not qualify to be a compoundable offence. It also doesn't cover the modesty of a male child.
- IPC 377, which was annulled in the landmark judgement in 2018, did not define 'unnatural offences'. It did not necessarily criminalise the act on children but was rather limited to the sexual act of the attacker.

These discrepancies and insufficient measures were the reason enough for wanting a reform that was driven by its objective to protect children against such crimes.

## Salient features of the POCSO Act 2012

The POCSO Act 2012 has some distinct features which make it important and relevant. They are discussed below;

- The act defines children as any individual aged below 18 years of age. The problem of gender exclusion in the previous acts was ignored here altogether as this act is gender-neutral in its stance.

- There are multiple forms and acts of sexual abuse defined under this act that are not just limited to pornography, harassment or penetrative/non-penetrative offences.
- These acts would be considered 'aggravated' if the child is mentally ill and/or the perpetrator comes from a position of authority and/or trust like a family member, doctor, teacher, etc.
- The prevention of 're-victimisation' of the child within the judicial system is of utmost importance as this act allows a policeman to act under the role of a child-protector throughout the investigation.
- The process of investigation is to be made as child-friendly as possible and justice to be served promptly within a year from the reporting of the incident.
- The setting up of 'Special Courts' has been done under this act which will exclusively be dealing with such offences with the sensibility and sensitivity they need.
- The central government is given the authority to make rules under the 45th section of the act.
- The State Commissions for the Protection of Child Rights (SCPCRs) and the National Commission for the Protection of Child Rights (NCPCR) have been given the authority to monitor the implementation of the act's provisions. Both of these authorities are statutory in nature.
- The POCSO act will override instances of inconsistencies with other provisions according to section 42A.
- The act makes the reporting of a sexual offence mandatory. Misuse of these laws with the purpose of defamation of the person is punishable.

## Punishment and Offences covered under the POCSO Act 2012

Provision under the POCSO Act	Name of the offence	Punishment
Section 4	Sexual assault that is penetrative in nature on a child below 16 years of age	A minimum of 20 years of imprisonment that may be extended up to imprisonment for the remainder of natural life + fine
Section 4	Sexual assault that is penetrative in nature on a child between 16 and 18 years of age	A minimum of 10 years of imprisonment that may be extended up to imprisonment for the remainder of natural life + fine
Section 6	Penetrative sexual assault that is aggravated in nature	A minimum of 20 years of rigorous imprisonment that may be extended to a life sentence + fine
Section 8	Sexual assault	3-5 years of imprisonment + fine
Section 10	Aggravated sexual assault	5-7 years of imprisonment + fine

Section 12	Sexual harassment	Upto 3 years of imprisonment + fine
Section 14(1)	Use of a child for pornography	Upon the first conviction, 5 years of imprisonment will be given. However, upon further convictions, the jail time can go upto 7 years + fine
Section 14(2)	Use of a child for pornography while committing an offence under Section 3	A minimum of 10 years of imprisonment that may extend upto imprisonment for life + fine
Section 14(3)	Use of a child for pornography while committing an offence under Section 5	A rigorous imprisonment term for life + fine
Section 14(4)	Use of a child for pornographic purposes while committing an offence under Section 7	A 6 to 8 years of imprisonment term + fine
Section 14(5)	Use of a child for pornographic purposes while committing an offence under Section 9.	An 8 to 10 years of imprisonment term + fine
Section 15	Offence of storing pornographic material involving a child for commercial purposes	A term of imprisonment that may extend upto 3 years + fine OR both

## POCSO Act – General Principles

There were 12 main principles defined under the Protection of Children from Sexual Offences Act of 2012. These were to be followed by everyone involved; the state governments, child welfare committees, the Special Courts, and the Police alike. These 12 principles have been listed down below;

1. **Best Interest of the child:** The most significant part of the process is the development of the child in a holistic manner.
2. **Right to Life and survival:** Any kind of psychological, physical, emotional, and mental harm should be kept away from the child in the best manner feasible.
3. **Right to be protected from discrimination:** The passage of justice should not be marked by any discrimination on any grounds. It should be transparent.
4. **Right to be treated with dignity and compassion:** Victims are to be treated with great care and sensitivity throughout the process.

5. **Right to be informed:** The legal proceedings should be clearly explained to the child victim or witness.
6. **Right to special preventive measures:** The likeliness of once abused children to be abused again is high and since prevention is better than cure, this act operated on the preventive measures pretty seriously.
7. **Right to effective assistance:** The process of legal proceedings can be harrowing for an individual in more than one way which is why a lot of crimes go unreported because the mental and financial cost is often too high. This is why the act provides for legal, health, counsel, psychological and financial aspects.
8. **Right to be heard and to express views and concerns:** A child has the right to be heard for the parts that affect him/her.
9. **Right to be protected from hardship during the justice process:** There is a very real secondary victimisation that occurs when a child is involved in the process of legal cases. This is to be minimised.
10. **Right to Privacy:** Cases can get very public which is why it is necessary that the identity and privacy of a child are protected at all times of the trial; pre and post-trial.
11. **Right to compensation:** Relief and rehabilitation of a child must be compensated for.
12. **Right to safety:** The protection of the child is vital; be it during the trial or after it.

## Issues related to Child Sexual Abuse

There are several issues that are linked to Child Sexual Abuse which are discussed below:

- **Multi-dimensional and Multi-layered:** Sexual abuse itself is a layered issue. Child sexual abuse becomes an even more layered issue. It has a detrimental impact on the child in more than one way. It affects their mental health, physical well-being, and behaviour among other things.
- **Digital Participation:** The propagation of child abuse has increased many folds with the progress and availability of technology and the internet. Child pornography, online harassment and bullying are new problems that have surfaced.
- **Ineffective Implementation:** The POCSO act came into immediate effect in 2012 but its implementation has staggered and thus, failed its objective which was to protect children from multiple forms of sexual abuse. The reasons have been listed below;
  - **Conviction Rate:** The conviction rate is low under the POCSO act. Only about 32% of the total reported cases get to the stage of conviction. Nearly 90% of cases are pending under this act.
  - **Delay in Judicial Action:** The Act mentions that all cases are to be resolved within a year of the crime being reported. A prolific case like the Kathua Rape case went on for 16 months before a judgement was served.
  - **Hostility towards the Child:** The laws speculate only on the biological age and not the mental age. Hence, there are multiple challenges that are age-dependent.

## POCSO Related Initiatives

There are multiple POCSO-related initiatives that have been undertaken by the government. They are discussed below:

1. **Child Abuse Prevention and Investigation Unit:** An Online Child Sexual Abuse and Exploitation (OCSAE) has been set up by the Central Bureau of Investigation (CBI). The unit is to work under the Special Crime Zone of CBI. The unit extends its territorial jurisdiction all over the country.

**2. Juvenile Justice Act/Care and Protection Act, 2000:** The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was recently passed by the Lok Sabha and sought to reinforce to streamline the government's efforts to provide better aid for the adoption and subsequent care of children. The Bill is an amendment to the Juvenile Justice (Care and Protection of Children) Act of 2015.

**3. Beti Bachao, Beti Padhao:** Beti Bachao, Beti Padhao is a campaign launched by the Government of India. It primarily targets the states of Haryana, Uttar Pradesh, Uttarakhand, Bihar, Punjab, and Delhi to address the declining Child Sex Ratio (CSR). It also aimed to work on the issues related to women's empowerment and emancipation.

**4. Child Labour Prohibition and Regulation Act, 2016:** This is an amendment to the act of 1986. The government shall provide harsher sentences and punishment for those in violation of this act. It bars the employment of teens in hazardous work conditions.

**5. Child Marriage Prohibition Act (2006):** The Child Marriage Restraint Act of 1929 was implemented under British rule and this act replaces it. It defines what a child is in the eyes of the law. An individual under 21 years of age and a female under 18 years of age shall be 'minors'. A marriage between minors shall be null and void if either of the parties demands it to be so. The marriage shall be void if the consent has been acquired through deceit, enticement or fraud from their guardians or if the primary purpose of the marriage was to abuse the child for human trafficking.

## POCSO Related Constitutional Provisions

The constitution has several provisions that guarantee the safeguarding of every child's childhood and subsequent youth.

- The constitution of India promises every child the right to lead a life of dignity and the right to privacy under Article 21, the right to equality under Article 14, the right against discrimination under Article 15, and the right against exploitation under Article 23 and 24.
- It makes elementary education for children from age 6 to 14 a fundamental right under Article 21A.
- Article 39(f) under the Directive Principles of State Policy obligate the State governments to make certain that equal opportunities and facilities are provided to children so as to enjoy their childhood and youth, free from any and all exploitation.