



## POCSO Act

**For Prelims:** [POCSO Act](#), [UN Convention on the Rights of the Child in 1992](#), [Indian Penal Code](#), [Juvenile Justice \(Care and Protection of Children\) Act](#), **POCSO Court**,

**For Mains:** POCSO Act, Issues in Implementation and Way Forward.

**Source:** [PIB](#)

### Why in News?

Recently, the Ministry of Women and Child Development has informed the [Lok Sabha](#) that the [Protection of Children from Sexual Offences \(POCSO\) Act, 2012](#), is one of the crucial legislations enacted by the Government to protect children from Sexual Abuse.

### What is the POCSO Act?

#### ▪ About:

- **POCSO Act** came into effect on 14<sup>th</sup> November 2012 which was enacted in consequence to India's ratification of the [UN Convention on the Rights of the Child in 1992](#).
- The aim of this special law is to address **offences of sexual exploitation and sexual abuse** of children, which were either not specifically defined or in adequately penalised.
- The Act defines **a child as any person below the age of 18 years**. The Act provides **punishment as per the gravity of offence**.
  - The Act was further reviewed and **amended in 2019** to Introduce more stringent punishment including the death **penalty for Committing sexual crimes on children**, with a view to deter the perpetrators & prevent such crimes against children.
  - The Government of India has also notified the **POCSO Rules, 2020**.

#### ▪ Features:

- **Gender-Neutral Nature:**
  - The Act recognizes that both girls and boys can be victims of sexual abuse and that such abuse is a **crime regardless of the gender** of the victim.
    - This is in line with the **principle that all children have the right to protection from sexual abuse** and exploitation, and that laws should not discriminate based on gender.
- **Ease in Reporting Cases:**
  - There is sufficient general awareness **now to report cases of sexual exploitation of children** not only by individuals but also by institutions as non-reporting has been made a specific **offence under the POCSO Act**. This has made it comparatively difficult to hide offences against children.
- **Explicit Definition of Terms:**
  - The storage of child pornography material has been **made a new offence**.
  - Further, the offence of 'sexual assault' has been defined in explicit terms (with increased minimum punishment) unlike an abstract definition of 'outraging modesty

of a woman' in the [Indian Penal Code](#).

▪ **POCSO Rules 2020:**

◦ **Interim Compensation and Special Relief**

- Rule-9 of the POCSO Rules allows the **Special Court to order interim compensation** for the child's needs related to relief or rehabilitation after the FIR's registration. This compensation is adjusted against the final compensation, if any.

◦ **Immediate Payment of Special Relief:**

- Under the POCSO Rules, the **Child Welfare Committee (CWC)** may recommend immediate **payment for essential needs** like food, clothes, and transportation, using funds from the District Legal Services Authority (DLSA), the District Child Protection Unit (DCPU), or funds maintained under the [Juvenile Justice Act 2015](#).
- The payment must be made within a week of receiving the CWC's recommendation.

◦ **Support Person for the Child:**

- The POCSO Rules **empower the CWC to provide a support person** to assist the child throughout the **investigation and trial process**.
- The support person is **responsible for ensuring the child's best interests**, including physical, emotional, and mental well-being, access to medical care, counseling, and education. They also inform the child and their parents or guardians about court proceedings and developments related to the case.

**Note:** In furtherance to the [Criminal Law \(Amendment\) Act, 2018](#), Department of Justice has started a Centrally Sponsored Scheme in October, 2019 for setting up of a total of 1023 **Fast Track Special Courts (FTSCs)** (including 389 exclusive POCSO Courts) Across the country.

- As on May 31, 2023, a total of 758 FTSCs including 412 Exclusive POCSO (e-POCSO) Courts are functional in 29 States/UTs across the country.

## What are the Issues and Challenges with the POCSO Act?

▪ **Issue with the Investigation:**

◦ **Low Representation of Women in the Police Force:**

- The POCSO Act provides for **recording the statement of the affected child by a woman sub-inspector** at the child's residence or place of choice.
- But it is practically **impossible to comply with this provision** when the number of women in the police **force is just 10%**, and many police stations hardly have women staff.

◦ **Lapses in the Investigation:**

- Though there is a provision to record statements using **audio-video means**, however, there are still reports of **lapses in the investigation** and preservation of crime scenes in some cases,
  - In ***Shafhi Mohammad vs The State of Himachal Pradesh (2018)***, the [Supreme Court](#) held in cases of heinous crimes, it is the duty of the investigating officer to photograph and videograph the scene of crime and to preserve the same as evidence.

◦ **No Examination by Judicial Magistrates:**

- Another provision of the act mandates the recording of the statement of the **prosecutrix by a judicial magistrate**.
- Though such statements are recorded in most cases, judicial magistrates are neither **called for cross-examination during trial** nor are those who retract their statement punished. In such a scenario, such statements get nullified.

▪ **Issue of Age Determination:**

- Though age determination of a juvenile delinquent is guided by the [Juvenile Justice \(Care and Protection of Children\) Act 2015](#) no such provision exists under the POCSO Act for juvenile victims.
  - In ***Jarnail Singh vs State of Haryana (2013) case***, the SC held that the given statutory provision should also be the basis to help determine age even for a child

who is a victim of crime.

- However, in absence of any change in the law or even specific directions, the investigating officers (IOs) **continue to rely on the date of birth recorded in school admission-withdrawal registers.**

▪ **Delays in the Filing of Charges:**

- As per the POCSO Act, the investigation of a case under the act is to be **completed within a period of one month** from the date of the commission of the offence, or from the date of the reporting of the offence.
- However, in practice, the **completion of investigation often takes longer** than one month due to various reasons such as lack of adequate resources, delays in obtaining forensic evidence, or the complexity of the case.

▪ **No Conditions to Prove Recent Intercourse:**

- Courts are required to presume that the accused committed the **offence under the POCSO Act.**
- The POCSO Act **does not impose any conditions** on the prosecution, contrary to the [Indian Evidence Act](#), which clearly requires the prosecution to establish recent intercourse, as well as the consent of the prosecutrix.
- However, it has been observed that even after the minor age of the victim is **proved, no such presumption is taken** up by the court during trial.
  - Under such circumstances, the expected increase in the conviction rate is unlikely to be achieved.

## What are the Initiatives to Curb Child Abuse?

- [Child Abuse Prevention and Investigation Unit](#)
- [Beti Bachao Beti Padhao](#)
- [The Juvenile Justice \(Care and Protection of Children\) Act, 2015](#)
- [Child Marriage Prohibition Act \(2006\)](#)
- [Child Labour Prohibition and Regulation Act, 2016](#)
- **POCSO Courts under Special Fast Track Courts.**

## Way Forward

- The government should provide adequate resources such as **funding and personnel to investigating agencies** handling POCSO cases. This will help to ensure that investigations are conducted in a timely and efficient manner.
- Investigating officers **should be provided with proper training** on the handling of POCSO cases. This can include **training on the proper techniques** for collecting and preserving evidence, interviewing child victims and witnesses, and the legal requirements of the POCSO Act.
- Setting up special courts for POCSO cases can **help to ensure that cases are handled promptly and efficiently.** This will also help to speed up the trial process, which can be important for the victim and their family.

## UPSC Civil Services Examination Previous Year Question (PYQ)

**Q.** Examine the main provisions of the National Child Policy and throw light on the status of its implementation. **(2016)**