



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 14th 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)**