



## Karnataka High Court Quashes POCSO Case

**For Prelims:** [POCSO Act, 2012](#), [United Nations](#), [Indian Penal Code](#), [Article 21](#), [Child Welfare Committee](#), [Deoxyribonucleic Acid \(DNA\) Tests](#)

**For Mains:** POCSO Act and issues with the implementation, Issues Related to Children

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

### Why in News?

The **Karnataka High Court** has recently quashed proceedings under the [Protection of Children from Sexual Offences \(POCSO\) Act, 2012](#) against a 23-year-old man accused of raping a minor, who he subsequently married.

- This decision includes a caveat allowing the **criminal proceedings to be revived if the man abandons his wife and child in the future**. This condition is aimed at ensuring the welfare and protection of the mother and child.

### How did the Court Justify the Quashing of the Case?

- **Accused's Counsel:** Argued that the accused and the victim were in love and the crime was registered after the parents agreed to the marriage. Highlighted that both families had come forward to support the marriage.
- **State's Counsel:** Argued that the case should not be quashed due to the heinous nature of the offence, which is punishable by ten years in prison. Emphasised the importance of taking the matter to trial.
- **Court's Decision:**
  - **Protection of the Victim and Child:** The court emphasised that releasing the petitioner without resolving the issue would leave the mother and child vulnerable, facing societal ignominy and potential jeopardy.
  - **Victim's Potential Hostility:** The court noted that the victim would likely turn hostile, making the conviction of the petitioner highly unlikely.
  - Justice highlighted the importance of considering the ground realities, stating that prolonging the criminal trial would cause undue agony and overshadow any eventual acquittal.

### What is the Protection of Children from Sexual Offences (POCSO) Act, 2012?

- **About:** The Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012) was enacted

to protect children from sexual abuse, filling a significant legislative gap in India despite the [United Nations' adoption of the Convention on the Rights of the Child in 1989](#).

- This Act imposes severe penalties, including **up to 20 years of imprisonment** and the death penalty for aggravated penetrative sexual assault.
- **Need:** Before the POCSO Act, 2012, India's only child protection legislation was the **Goa Children's Act, 2003**. The [Indian Penal Code \(IPC\) Sections 375, 354, and 377](#) were inadequate as they **did not cover male children or provide clear definitions of 'modesty' and 'unnatural offence'**.
  - The rising cases of child sexual abuse necessitated a specific law, leading to the enforcement of the POCSO Act, driven by the **Ministry of Women and Child Development**.
- **General principles:**
  - **Right to be Treated with Dignity:** Reflecting the importance of treating children with compassion and respect.
  - **Right to Life and Survival:** Ensuring children are protected as provided by [Article 21](#) and raised in a secure environment.
  - **Right Against Discrimination:** Fair and just procedures without discrimination based on sex, religion, or culture.
  - **Right to Preventive Measures:** Training children to recognise and prevent abuse.
  - **Right to be Informed:** Keeping the child informed about legal proceedings.
  - **Right to Privacy:** Maintaining confidentiality of the proceedings to protect the child's privacy.
- **Trial of Offences:** Special courts can take cognisance without the accused being committed to trial. Efforts must be made to prevent the child from being exposed to the accused.
  - **Evidence must be recorded within 30 days**, and trials should be completed within a year of taking cognisance.
  - Emphasises the importance of medical examination, but notes that physical injuries may not always be present.
  - Section 42A ensures that POCSO **provisions override any conflicting laws**.
- **Shortcomings of the POCSO Act:**
  - **Application of Last Seen Theory:** The Supreme Court in *Anjan Kumar Sarma v. State of Assam, 2017* ruled that this theory is weak without corroborative evidence, risking wrongful convictions.
    - This theory states that if someone is the **last person seen with the victim before a crime** and cannot provide a credible explanation, there is a strong **presumption that they are responsible for the crime**.
  - **Consensual Sexual Activities:** The Act prosecutes a **non-minor partner in consensual sex with a minor**, as minors' consent is deemed irrelevant.
  - **False Complaints by Children:** Section 22 exempts children from punishment for false complaints, leading to potential misuse.
  - **Two-Finger Test:** Despite being banned in 2012, this test is still conducted, violating the victim's privacy and dignity, as noted in *Lillu @ Rajesh v. State of Haryana, 2013*.
    - The [Supreme Court](#), in 2022 reaffirmed that **conducting invasive 'two-finger' or 'three-finger' vaginal tests on rape or sexual assault survivors is considered misconduct**. The tests are deemed regressive and are used to determine if the survivor was "habituated" to sexual intercourse.
  - **Unprepared Investigation Machinery:** The Bombay High Court in the case of the *Addl. Sessions Judge, Hoingoli and Ors. v. Bhawat and Ors., 2017* acquitted the accused due to unsealed evidence, highlighting faulty investigation procedures.
- **Punishment for Offences:**

# Punishment for offences covered in the POCSO Act, 2012

Punishment for the above offences is specified in the table:

Name of the offence	Relevant provision of the POCSO Act	Punishment
Penetrative sexual assault on a child of 16 to 18 years of age	Section 4	Minimum imprisonment of 10 years which may extend to imprisonment for life plus fine
Penetrative sexual assault on a child below 16 years of age	Section 4	Minimum imprisonment of 20 years which may extend to imprisonment for the remainder of natural life plus fine
Aggravated penetrative sexual assault	Section 6	Minimum rigorous imprisonment of 20 years which may extend to imprisonment for the remainder of natural life plus fine or death
Sexual assault	Section 8	Imprisonment of 3 to 5 years plus fine
Aggravated sexual assault	Section 10	Imprisonment of 5 to 7 years plus fine
Sexual harassment	Section 12	Imprisonment which can extend upto 3 years plus a fine.
Use of a child for pornography	Section 14(1)	First conviction- imprisonment extending up to 5 years second or further convictions- imprisonment extending up to 7 years plus fine
Use of a child for pornography while committing an offence under Section 3	Section 14(2)	Minimum imprisonment of 10 years extending up to imprisonment for life plus fine
Use of a child for pornography while committing an offence under Section 5	Section 14(3)	Rigorous imprisonment for life plus fine
Use of a child for pornographic purposes while committing an offence under Section 7	Section 14(4)	Imprisonment of 6 to 8 years plus fine
Use of a child for pornographic purposes while committing an offence under Section 9.	Section 14(5)	Imprisonment of 8 to 10 years plus fine
Offence of storing pornographic material involving a child for commercial purposes	Section 15	Imprisonment extending upto 3 years or fine or both



## Significant Judicial Pronouncements on the POCSO Act, 2012

- ***Bijoy v. The State of West Bengal, 2017:*** In this case, the Calcutta High Court issued **directives to protect the dignity of child victims of sexual assault.**
  - Police must register FIRs under Section 19 of the POCSO Act and inform victims and their parents about legal aid rights.
  - **Immediate medical examination of the child** post-[First Information Report \(FIR\)](#) registration as per Section 27 of the POCSO Act.
  - Victims identified as '**children in need of care and protection**' under the [Juvenile Justice Act](#) must be forwarded to the [Child Welfare Committee \(CWC\)](#). **Victim identities are to be kept confidential.**
  - Compensation can be awarded at the interim stage by the Special Court, independent of the convict's compensation post-conviction, aimed at relief and rehabilitation of the child victim.
- ***Vishnu Kumar v. State of Chhattisgarh, 2017:*** The Chhattisgarh High Court highlighted the need for compliance with Section 36 of the POCSO Act. Guidelines included:
  - Ensuring child **witnesses are comfortable** during proceedings, possibly through in-camera sessions and engaging them personally.
  - Flexibility in **evidence rules to prioritise truth over strict adherence to procedures.** Recording child statements should allow for breaks to ensure comfort and accuracy.
- ***Dinesh Kumar Maurya v. State of U.P., 2016:*** The Allahabad High Court set aside a conviction due to lack of medical evidence. Important observations included:
  - **Injuries are not necessary for proving sexual assault;** victim testimony is crucial.
  - Courts must consider the potential for false allegations due to external influences on minors.
- ***Sunderlal v. The State of M.P., 2017:*** The Madhya Pradesh High Court addressed a petition for terminating a minor's pregnancy. Key directives:
  - **Consent from the parent suffices for a minor; the minor's consent is not required.** The right to terminate pregnancy is derived from Article 21 of the Constitution.
    - A committee of medical practitioners must evaluate the termination request. Post-termination, the [Deoxyribonucleic Acid \(DNA\) Tests](#) of the foetus must be preserved according to legal procedures.

### **Drishti Mains Question:**

**Q.** Analyze the role of the Protection of Children from Sexual Offences (POCSO) Act, 2012 in safeguarding minors from sexual abuse. What are the key provisions of the Act and their significance?

### **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)**