

# Amendments proposed to POCSO Act

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## Manifest Pedagogy

Sexual violence has been a lot in news recently – Justice Verma Committee on rape loss acter Nirbhaya issue, criminal loss amendment bill, rehabilitation scheme for sexual victims, child pornography etc. Provisions made by government against them in sexual violence may b asked in both prelims and mains and the issue of sexual violence as a social malaise can b asked as part of indian society in mains

## In news

Cabinet proposed changes to POCSO Act

## Placing it in syllabus

1. Indian Polity – Mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections
2. Indian Society – Social Empowerment

## Static dimensions

- Sexual Offences against Children as a Social problem
- Constitutional protection for Children
- The Protection of Children from Sexual Offences Act, 2012
- International Conventions against sexual violence

## Current dimensions

- Amendment proposed to POCSO Act

# Content

Sexual violence may be physical or mental which may affect any particular group specifically women and children. It may range from a simple act of gazing to Rape. The definition now needs to expand in the context of the recent ruling on Section 377, hence the definition can no longer be heteronormative

## Provisions of the POCSO Act

1. This act is applicable to the whole of India and provides protection to children under the age of 18 years against sexual offences.
2. **Definition of sexual abuse** – penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor.
3. It has raised the age of consensual sex from 16 years as per Indian Penal Code, 1860 to 18 years. This means that –
  1. Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented.
  2. A husband or wife can be prosecuted for engaging in a sexual act with his or her spouse under the age of eighteen years.
4. The burden of proof lies on the accused – punishment has been provided for false complaints or false information with malicious intent.
5. **The Protection of Children from Sexual Offences Act, 2012 provides:**
  - Precise definitions for different types of Child abuse crimes

- Stringent punishments
  - Mandatory reporting
  - Child-friendly procedures
  - Under the Act, the power to make rules rests with the Central Government
  - Qualifications and experience of interpreters
  - Arrangements for care and protection
  - Criteria for award of compensation by the Special Court
1. The rules of the act rely on the structures established under **the Juvenile Justice Act, 2000.**
  2. The **National Commission for the Protection of Child Rights (NCPCR)** and **State Commissions for the Protection of Child Rights (SCPCRs)** have been made the designated authority to monitor the implementation of the Act.
  3. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act.
  4. In keeping with the best international child protection standards, the Act also casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine.
  5. The Act also casts the police in the role of child protectors and are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise.
  6. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.
  7. The Act also makes provisions for the medical examination of the child designed to cause as little distress as possible. The examination is to be carried

out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

8. The Act further makes provisions for avoiding the re-victimization of the child at the hands of the judicial system. It provides for special courts that conduct the trial in-camera and without revealing the identity of the child, in a manner that is as child-friendly as possible.
9. The Special Court can determine the amount of compensation to be paid to a child who has been sexually abused for the child's medical treatment and rehabilitation.
10. **Criteria for award of compensation by the Special Court**, which includes the gravity of the offence; loss of educational opportunity or employment as a result of the offence; and disability, disease or pregnancy suffered as a consequence of the offence. The compensation may be awarded at the interim stage as well as upon completion of trial.
11. The Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.

## **Changes made**

- Addressing the changing needs to control sexual crimes against children, the Union cabinet approved amendments to the Protection of Children from Sexual Offences (POCSO) Act, 2012. The amendments enhance the quantum of punishment, including death penalty, for committing sexual crimes against children.
- The amendment is made to address the aspects of child sexual abuse in appropriate manner. The modification is made to address the need for stringent measures required to deter the rising trend of child sex abuse in the country.

- Amendments are proposed to **discourage the trend of child sexual abuse and to provide option of stringent punishment, including death penalty**, for committing aggravated penetrative sexual assault crime on a child to protect the children from sexual abuse.
- The amendments are also proposed **to protect children from sexual offences in times of natural calamities** and disasters and in cases where children are administered, in any way, any hormone or any chemical substance, to attain early sexual maturity for the purpose of penetrative sexual assault.
- The amendments are also proposed **to address the menace of the child pornography**. It is proposed to **levy fine for not destroying/or deleting/ or reporting the pornographic material involving a child**. The person can be further penalized with jail term or fine or both for transmitting/propagating/administrating such material in any manner except for the purpose of reporting as may be prescribed and for use as evidence in court.
- Penal provisions have been made more stringent for storing/possessing any pornographic material in any form involving a child for commercial purpose.
- Provisions were also added to provide imprisonment for the rest of one's natural life for gang rape of a girl under 16 years, while rape of a girl in the same age bracket would be punishable with jail of minimum 20 years upto life imprisonment.

The amendment is expected to discourage the trend of child sexual abuse by acting as a deterrent due to strong penal provisions incorporated in the Act. It may protect the interest of vulnerable children in times of distress and ensures their safety and dignity. The amendment aims to establish clarity regarding the aspects of child abuse and punishment thereof.

However, the absence of these above changes to POCSO Act ,

2012, which deals with sexual crimes against both girls and boys, meant that same offences committed against boys carried lighter punishments. Present changes will address these anomalies.