

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

ACT NO. 32 OF 2012

Special Module for RPSC Assistant Prosecution Officer (APO) Mains Examination | Paper-I Law

1. Legislative History, Constitutional Foundation & Objects

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted by Parliament to address heinous offences of sexual exploitation and sexual abuse of children—a subject which had previously been inadequately addressed under the generic provisions of the Indian Penal Code, 1860. The statutory enactment operationalizes India's international commitments following the accession to the **United Nations Convention on the Rights of the Child (UNCRC), 1989** (ratified by India on 11th December 1992). The Act draws constitutional validity from **Article 15(3)** (special affirmative provisions for children), **Article 21** (right to dignified life and bodily integrity), and Directive Principles under **Article 39(e) & (f)** of the Constitution of India.

Statement of Objects and Reasons (SOR): The POCSO Act was formulated with the solemn objective to protect children from offences of sexual assault, sexual harassment, and pornography, while providing for the establishment of child-friendly Special Courts for speedy trial, safeguarding the best interests of the child at every stage of the criminal judicial proceeding.

2. Section 1: Short Title, Extent and Commencement

Section 1(1): This Act may be called the Protection of Children from Sexual Offences Act, 2012.

Section 1(2): It extends to the whole of India (including the UT of Jammu & Kashmir subsequent to the Jammu and Kashmir Reorganisation Act, 2019).

Section 1(3): The Act came into force on **14th November 2012** (Children's Day), vide Ministry of Women and Child Development Notification S.O. 2642(E).

3. Structural Scheme of the Act (Analytical Overview for Mains)

Chapter	Title	Section Range	Syllabus Relevance for APO Mains
Chapter I	Preliminary	Sections 1 – 2	Definitions of Child, Shared Household, Special Court, etc.
Chapter II	Sexual Offences against Children	Sections 3 – 12	PSA, APSA, Sexual Assault, ASA, Sexual Harassment (Core offences)
Chapter III	Child Pornography	Sections 13 – 15	Pornographic storage, facilitation, and commercial exploitation
Chapter IV	Abetment and Attempt	Sections 16 – 18	Punishment equivalence, abetment definitions, attempt parameters
Chapter V	Procedure for Reporting	Sections 19 – 23	Mandatory reporting, SJPU role, media restrictions, confidentiality
Chapter VI	Recording Child's Statement	Sections 24 – 27	Police & Section 164 CrPC statements, medical examination protocols
Chapter VII	Special Courts & Allied Matters	Sections 28 – 38	Designation, Presumptions (Sec 29/30), Evidence, Child-friendly trial
Chapter VIII	Procedure and Powers of Court	Sections 33 – 40	Cognizance, non-adversarial trial, SPP appointment (Sec 32), Legal Aid

APO Examination Note: A fundamental distinction between POCSO and IPC/BNS lies in the *gender-neutral character* of the victim and perpetrator under POCSO. Under Section 3, 5, 7, 9, and 11, any person (male, female, or transgender) can be an accused, and any person below 18 years of age can be a victim.

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4. Section 2: Statutory Definitions (Syllabus Core)

Section 2 of the POCSO Act provides exhaustive and statutory definitions critical for interpreting the elements of criminal culpability and territorial/procedural jurisdiction.

Section 2(1)(d) - "Child"

"Child" means any person below the age of eighteen years. The age is calculated according to the calendar year. Gender neutrality is absolute; consent of a child is legally non-est and incapable of vitiating criminality.

Section 2(1)(a) & (b) - "Aggravated Offences"

Aggravated Penetrative Sexual Assault as defined under Section 5; Aggravated Sexual Assault as defined under Section 9. Relies on breach of trust, custody, or heinous circumstances.

Section 2(1)(c) - "Arm's Length Relationship"

Relationship where there is no relationship of dependency, trust, or authority between the persons concerned. Important to negate aggravation under Section 5(k).

Section 2(1)(f) - "Domestic Relationship"

Borrowing definition from Section 2(f) of Protection of Women from Domestic Violence Act, 2005 (PWDVA): shared household living through consanguinity, marriage, adoption.

Section 2(1)(m) - "Shared Household"

Household where the person lives or has lived with the child in a domestic relationship, whether owned, rented, or joint family property.

Section 2(1)(n) & (o) - "Special Court" & "SPP"

Court designated under Section 28 (Court of Session); Special Public Prosecutor appointed under Section 32 having not less than 7 years of criminal standing.

5. Determination of Age of the Child Victim (Judicial Jurisprudence)

The threshold burden on the prosecution in every POCSO trial is establishing that the victim was a "child" on the date of commission of the alleged offence. Section 34(2) of the POCSO Act governs age determination when a question arises before the Special Court. By statutory mandate and Supreme Court interpretation, the procedure prescribed under **Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015** is imported mutatis mutandis.

Landmark Precedent: Jarnail Singh v. State of Haryana (2013) 7 SCC 263

The Supreme Court held that the statutory rule of age determination provided under the Juvenile Justice Rules applies with equal force to determine the age of a child-victim under criminal law. The statutory hierarchy is:

1. Matriculation or equivalent certificate from the examination board;
2. In absence thereof, date of birth certificate from the school first attended;
3. In absence thereof, birth certificate given by a corporation, municipal authority, or panchayat;
4. Only in the absence of all documentary evidence, ossification test / medical bone age test.

Rishipal Singh Solanki v. State of U.P. (2022) 8 SCC 438 & P. Yuvaprakash (2023)

The Supreme Court reiterated that an ossification test is an opinion of last resort. The margin of error of +/- 2 years cannot be used mechanically to strip a victim of POCSO protections when school records are reliable, credible, and proved under Section 35 of the Indian Evidence Act.

Prosecution Strategy for Rajasthan APO Exam: In charge framing and examination of witnesses (PWs), the APO must tender the original scholar register entry (SR Register) through the Headmaster/Principal along with the admission form signed by parents to conclusively establish minority beyond doubt.

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6. Section 3: Penetrative Sexual Assault (PSA)

Section 3 defines Penetrative Sexual Assault. The provision is widely cast and is gender-neutral as to both perpetrator and victim. An offence under Section 3 is committed when a person engages in any of the four distinct statutory acts enumerated below:

Statutory Ingredients of Section 3 POCSO Act:

1. **Clause (a):** Penile penetration into the vagina, mouth, urethra or anus of a child, or making the child do so with another person;
2. **Clause (b):** Insertion of any object or any part of the body (other than penis) into the vagina, urethra or anus of a child, to any extent;
3. **Clause (c):** Manipulation of any body part of a child causing penetration into the vagina, urethra, anus or any part of the body;
4. **Clause (d):** Application of mouth to the penis, vagina, anus or urethra of a child, or making the child do so to another person.

7. Critical Comparative Analysis: Section 3 POCSO vs. Section 375 IPC (Section 63 BNS)

Parameters	Section 3 POCSO Act, 2012	Section 375 IPC / Section 63 BNS
Gender of Perpetrator	Gender-neutral ("Whoever" - male, female, transgender)	Solely a "man" can be the principal perpetrator
Gender of Victim	Gender-neutral (Boy, Girl, or Transgender Child)	Solely a "woman" can be the victim of rape
Victim Age Criterion	Strictly under 18 years of age (Section 2(1)(d))	Any female (consent vitiated if under 18 u/s 375 Sixthly)
Element of Consent	Irrelevant; consent is legally void ab initio	Consent is a core determining factor for adults

8. Section 4: Punishment for Penetrative Sexual Assault

Section 4 prescribes the penal sanction for an offence under Section 3. The quantum of sentence was substantially amended by the **POCSO (Amendment) Act, 2019 (Act 25 of 2019)** effective from 16th August 2019:

- **Prior to 2019 Amendment:** Imprisonment for a term which shall not be less than 7 years, extending up to imprisonment for life, and fine.
- **Post-2019 Amendment:** Rigorous imprisonment for a term which shall **not be less than 10 years**, but which may extend to **imprisonment for life** (defined as remainder of natural life), and shall also be liable to fine.
- **Section 4(2) (Added in 2019):** If penetrative sexual assault is committed on a child below 16 years, punishment is rigorous imprisonment for not less than 20 years, extendable to life imprisonment, and fine.

Independent Thought v. Union of India (2017) 10 SCC 800

The Supreme Court read down Exception 2 to Section 375 IPC, holding that sexual intercourse by a husband with his minor wife below 18 years is rape, aligning the IPC squarely with the protective philosophy of the POCSO Act.

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9. Section 5: Aggravated Penetrative Sexual Assault (Clause-by-Clause)

Section 5 elevates Penetrative Sexual Assault to an "Aggravated" offence based on the status of the perpetrator, custodial vulnerability, age of the victim, use of weapons, physical aftermath, or collective commission. For Rajasthan APO Mains, candidates must remember the statutory classifications under clauses (a) to (u):

Custodial & Authority Status [Clauses (a)-(e)]

-
- (a):**
Police officer within police station/premises/custody.
-
- (b):**
Member of armed forces or security forces.
-
- (c):**
Public servant taking advantage of official position.
-
- (d):**
Management/staff of jail, remand home, protection home.
-
- (e):**
Management/staff of hospital or medical facility.

Fiduciary & Educational Custody [Clauses (f)-(k)]

-
- (f):**
Staff/management of school, creche, religious institution.
-
- (g):**
Gang penetrative sexual assault (two or more persons).
-
- (k):**
Relative, guardian, teacher, or person in position of trust, authority, or living in shared household.

Means, Severity & Harm [Clauses (h)-(m)]

-
- (h):**
Commission using lethal weapons, fire, acid, or poison.
-
- (i):**
Causes grievous hurt, mental impairment, HIV, or disease.
-
- (j):**
Child is pregnant as a consequence of the assault.
-
- (l):**
Exploiting physical or mental disability of the child.
-
- (m):**
Child below the age of twelve years.

Premeditation & Repetition [Clauses (n)-(u)]

-
- (n):**
Offence committed repeatedly on the child.
-
- (o):**
Causing death of the child during or subsequent to the act.
-
- (p):**
During communal or sectarian violence.
-
- (q):**
Administering stupefying, intoxicating, or psychotropic substance.

10. Statutory Scope of "Person in Position of Trust or Authority" [Sec 5(k)]

Section 5(k) is one of the most frequently charged provisions in prosecution practice. It encompasses fathers, stepfathers, uncles, cousins, family friends, neighbors with access, tutors, religious heads, and domestic helpers. The prosecution does not need to show physical force; the betrayal of inherent trust or psychological subjugation completes the aggravated requirement.

State of H.P. v. Asha Ram (2005) & X v. State of Maharashtra (2020)

The Supreme Court underlined that where the accused stands in loco parentis or exercises moral/physical ascendancy over the child victim, the vulnerability of the victim is absolute, justifying the highest severity of statutory punishment.

Framing of Charge under Sec 5 POCSO: In the charge sheet, the APO must explicitly specify the exact sub-clause of Section 5 (e.g., "Section 5(m) read with Section 6" for a child under 12, or "Section 5(k) read with Section 6" for a relative), rather than a vague generic charge of Section 5.

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11. Section 6: Punishment for Aggravated Penetrative Sexual Assault

Section 6 prescribes extreme penal consequences. The 2019 legislative amendment introduced capital punishment for APSA, creating parity with Section 376AB and 376DB of the Indian Penal Code.

Text of Section 6 (Post-2019 Amendment):

Whoever commits aggravated penetrative sexual assault shall be punished with **rigorous imprisonment for a term which shall not be less than twenty years**, but which may extend to **imprisonment for life**, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with **death**.

12. Key Legal Nuances of Section 6 for Prosecution

- **Minimum Sentence Floor:** The Court possesses no judicial discretion to award a sentence below 20 years of rigorous imprisonment under Section 6. The statutory floor is mandatory.
- **Definition of Life Imprisonment:** The statute explicitly defines life imprisonment as imprisonment for the *remainder of that person's natural life*, precluding premature administrative remission prior to full term under Section 433A CrPC without judicial review.
- **Mandatory Fine Component:** The fine imposed must be just and reasonable to meet the medical expenses and rehabilitation of the victim (Section 6 proviso read with Section 33(8)).

13. Capital Punishment in POCSO: Constitutional Validity & Judicial Restraint

The introduction of the death penalty under Section 6 has been evaluated against the 'Rarest of Rare Cases' doctrine enunciated in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 and *Machhi Singh v. State of Punjab* (1983) 3 SCC 470.

Aggravating Circumstances (Prosecution Focus)	Mitigating Circumstances (Defence Focus)
Extreme brutality, mutilation of genitalia, or sodomy	Young age of the accused at the time of incident
Tender age of victim (e.g., infant below 6 years)	Possibility of reformation and rehabilitation
Total breach of sacred fiduciary trust (father/guardian)	Absence of prior criminal antecedents
Incurable trauma, persistent vegetative state, or murder	Socio-economic backwardness, mental impairment

Manoj & Ors. v. State of Madhya Pradesh (2023) 2 SCC 353

The Supreme Court mandated that while seeking capital punishment under POCSO/IPC, the prosecution must place on record a psychiatric evaluation and jail conduct report to demonstrate that the option of reformation is completely closed.

Rajasthan APO Examination Tip: When answering an essay-type question on Section 6, explicitly trace the evolutionary transition from the 2012 enactment (minimum 10 years) to the 2019 amendment (minimum 20 years / death penalty), showing deep mastery of statutory history.

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14. Section 7: Sexual Assault (Non-Penetrative Contact)

Section 7 penalizes non-penetrative sexual abuse. It bridges the critical legislative lacuna where an offender subjects a child to sexual touch without committing penetration under Section 3.

Ingredients of Section 7 POCSO Act:

Whoever, with sexual intent:

- (a) touches the vagina, penis, anus or breast of the child; or
 - (b) makes the child touch the vagina, penis, anus or breast of such person or any other person; or
 - (c) does any other act with sexual intent which involves physical contact without penetration,
- is said to commit sexual assault.

15. The Historic "Skin-to-Skin" Controversy & Supreme Court Settlement

A monumental issue arose before the Bombay High Court (Nagpur Bench) in 2021, which had held that grope through clothing without direct "skin-to-skin" physical touch does not constitute sexual assault under Section 7 and falls merely under Section 354 IPC. This judgment provoked widespread legal criticism and was overturned in appeal.

Attorney General for India v. Satish & Anr. (2022) 5 SCC 541 (Supreme Court 3-Judge Bench)

The Supreme Court emphatically reversed the Bombay High Court ruling, laying down binding principles:

1. **Literal & Purpose-Oriented Interpretation:** The expression "physical contact" in Section 7 cannot be restricted to "skin-to-skin" contact. Restricting it would destroy the legislative object of POCSO.
2. **Sexual Intent is the Gravamen:** The crucial touchstone is "sexual intent" accompanied by physical contact, irrespective of whether clothes intervene.
3. Any contrary interpretation would lead to absurd outcomes where an offender wearing gloves or abusing a child through clothing would escape POCSO sanctions.

16. Section 8: Punishment for Sexual Assault

Section 8 provides: Whoever commits sexual assault shall be punished with **imprisonment of either description for a term which shall not be less than three years**, but which may extend to **five years**, and shall also be liable to fine.

17. Comparative Chart: Section 7 POCSO vs. Section 354 IPC (Section 74 BNS)

Distinctive Head	Section 7 POCSO Act	Section 354 IPC / Sec 74 BNS
Essential Intent	Must be "Sexual Intent" specifically proved/presumed	Intent to outrage modesty or knowledge thereof
Victim Scope	Strictly a child (<18 years), male, female, transgender	Only female of any age (woman)
Presumption of Mental State	Presumption under Section 30 POCSO applies	No statutory presumption; prosecution must prove mens rea
Minimum Punishment	Mandatory minimum 3 years up to 5 years	Mandatory minimum 1 year up to 5 years

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18. Section 9: Aggravated Sexual Assault (ASA)

Section 9 mirrors the aggravating factors of Section 5 but applies them to non-penetrative Sexual Assault under Section 7. Where an act of sexual touch occurs under conditions of custodial dominance, vulnerability, or dangerous instrumentality, the offence is elevated to Aggravated Sexual Assault.

Aggravating Circumstances under Section 9 (Summary Matrix):

- **Custodial Hierarchy:** Police officers, armed forces personnel, jail staff, hospital staff, teachers, hostel wardens committing sexual assault on children in their care [Clauses (a)-(f)];
- **Group / Plural Assault:** Committed by more than one person acting in concert [Clause (g)];
- **Weapons & Noxious Means:** Using arms, fire, corrosive substance, or dangerous weapons [Clause (h)];
- **Severe Physical Consequences:** Inflicting grievous hurt or transmitting disease/HIV [Clause (i)];
- **Breach of Trust:** Committed by a guardian, relative, or person in trust/authority [Clause (k)];
- **Tender Age:** When the victim child is below twelve years of age [Clause (m)];
- **Repetition:** When the accused commits sexual assault repeatedly on the child [Clause (n)].

19. Section 10: Punishment for Aggravated Sexual Assault

Section 10 provides the statutory penal sentence for Aggravated Sexual Assault under Section 9:

Whoever commits aggravated sexual assault shall be punished with **imprisonment of either description for a term which shall not be less than five years**, but which may extend to **seven years**, and shall also be liable to fine.

20. Comprehensive Punishment Comparison Across Chapter II POCSO

Offence Provision	Nomenclature	Minimum Sentence	Maximum Sentence
Section 3 / Sec 4(1)	Penetrative Sexual Assault	10 Years RI (Post-2019)	Life Imprisonment (Natural Life) + Fine
Section 4(2)	PSA on Child < 16 Years	20 Years RI	Life Imprisonment + Fine
Section 5 / Sec 6	Aggravated Penetrative Sexual Assault	20 Years RI	Life Imprisonment / Death Penalty + Fine
Section 7 / Sec 8	Sexual Assault	3 Years Imprisonment	5 Years Imprisonment + Fine
Section 9 / Sec 10	Aggravated Sexual Assault	5 Years Imprisonment	7 Years Imprisonment + Fine

APO Framing of Charges Insight: In cases where penetration is attempted but incomplete or where medical evidence (hymenal tear or anal injury) does not establish penetration beyond doubt, Section 9 read with Section 10 serves as a vital alternative or lesser charge under Section 222 CrPC (Section 245 BNSS).

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21. Section 11: Sexual Harassment of a Child (Non-Contact Offences)

Section 11 codifies offences where there is no physical touch, but the offender subjects the child to psychological, visual, verbal, or digital sexual degradation. A person is said to commit sexual harassment under Section 11 upon satisfying any of the five statutory clauses:

Clause (i) - Verbal / Acoustic Indecency

Utters any word, makes any sound or gesture, or exhibits any object with sexual intent, intending that such word, sound, gesture, or object shall be heard or seen by the child.

Clause (ii) - Bodily Exposure

Exhibits his or her body or any body part with sexual intent so that it is seen by the child, including exhibitionism or flashing private parts before minors.

Clause (iii) - Forced Pornography Viewing

Shows any pornographic material to the child for any purpose with sexual intent, whether physical magazines, electronic photos, videos, or digital streaming.

Clause (iv) - Stalking & Surveillance

Repeatedly follows, watches, or contacts the child in person, or through electronic, digital, or any other means, monitoring internet, email, or social media activities.

Clause (v) - Coercion and Enticement: Entices, induces, or threatens the child for pornographic purposes, sexual favors, or improper physical exploitation.

22. Section 12: Punishment for Sexual Harassment

Section 12 prescribes: Whoever commits sexual harassment upon a child shall be punished with **imprisonment of either description for a term which may extend to three years**, and shall also be liable to fine.

23. Intersection with Cyber Laws and IPC Stalking Provisions

Clause (iv) of Section 11 specifically penalizes cyberstalking and digital harassment of minors. While Section 354D of the IPC only protects women against male stalkers, Section 11(iv) of POCSO is fully gender-neutral. Moreover, by virtue of Section 42 of POCSO, if an offence is punishable under both POCSO and the Information Technology Act, 2000 (Section 67B), the offender will be liable to punishment under the provision that provides greater degree of severity.

Precedent: Mahender Singh v. State of Rajasthan (2018)

The High Court held that continuous phone calls with obscene undertones made to a minor school girl squarely attract Section 11(i) and 11(iv) of the POCSO Act, and the victim's corroboration through call detail records (CDR) and certificate u/s 65B of Evidence Act constitutes conclusive proof.

Key Takeaway for Exam: Unlike Section 7 where physical contact is indispensable, Section 11 functions entirely on sight, sound, digital transmission, and non-contact conduct.

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24. Section 13: Using Child for Pornographic Purposes

Section 13 prohibits the exploitation of children in commercial or non-commercial pornography. An offence is committed when a person uses a child for pornographic purposes, which includes:

- Representing the sexual parts of a child for sexual gratification;
- Engaging the child in real or simulated sexual acts, recorded by any medium;
- Producing, distributing, publishing, or broadcasting visual depiction of sexually explicit conduct involving a child.

25. Section 14: Punishment for Use of Child for Pornographic Purposes

Sub-Section	Nature of Conduct	Prescribed Punishment
Section 14(1)	Using child for pornography for commercial purposes	Imprisonment not less than 5 years, extendable to 7 years + Fine
Section 14(2)	Using child for pornography (non-commercial / general)	Imprisonment not less than 3 years, extendable to 5 years + Fine

26. Section 15: Storage, Possession, and Non-Reporting of CSAM (2019 Overhaul)

The 2019 Amendment drastically amended Section 15 to penalize the possession, storage, and failure to report Child Sexual Abuse Material (CSAM).

Core Mandates under Section 15:

1. **Section 15(1):** Any person having storage or possession of child pornographic material in any form, and fails to delete, destroy, or report it to the Special Juvenile Police Unit (SJPU) or local police, shall be liable to a **fine**.
2. **Section 15(2):** Any person who stores or possesses child pornographic material for *commercial purposes* shall be punished with imprisonment for not less than **three years**, extendable to **five years**, or fine, or both.
3. **Section 15(3):** Whoever stores CSAM with the intention to transmit, propagate, or distribute shall be punished with imprisonment for not less than **five years**, extendable to **seven years**, and fine.

Supreme Court Landmark Ruling: Just Rights for Children Alliance v. S. Harish (2024) INSC 725

The Supreme Court categorically overturned the Madras High Court judgment which had held that mere downloading or viewing of child pornography in private does not constitute an offence under POCSO. The Apex Court ruled:

- Viewing or storing CSAM is a severe offence under Section 15 POCSO and Section 67B IT Act;
- The term "Child Pornography" should be replaced with "Child Sexual Abuse and Exploitation Material" (CSAEM);
- Mere possession without reporting triggers statutory liability, as possession fuels the continuous commercial demand for child abuse.

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27. Section 16: Abetment of an Offence

Section 16 adopts the tripartite definition of abetment found in Section 107 of the Indian Penal Code, applying it expressly to all POCSO offences. A person abets an offence under POCSO who:

Three Modes of Abetment under Section 16:

First: Instigates any person to do that offence; or

Secondly: Engages with one or more other person or persons in any conspiracy for doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy; or

Thirdly: Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I: A person who, by wilful misrepresentation or concealment of a material fact which they are bound to disclose, causes or procures an offence, is deemed to instigate it.

Explanation II: Facilitating the commission of an act before or at the time of commission constitutes intentional aiding.

28. Section 17: Punishment for Abetment (Principle of Equivalence)

Section 17 establishes the principle of *strict penal equivalence* between the principal perpetrator and the abettor.

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with the **punishment provided for that offence**.

Thus, a person who aids an offender in committing Aggravated Penetrative Sexual Assault under Section 5 (e.g., holding the child or guarding the door) is punishable with the full measure of Section 6 (minimum 20 years to life/death).

29. Section 18: Attempt to Commit an Offence

Section 18 governs criminal attempts under the POCSO Act, analogous to Section 511 IPC. Whoever attempts to commit any offence punishable under this Act, or causes such offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with:

- **Imprisonment of either description:** For a term which may extend to **one-half of the longest term of imprisonment** provided for that offence, or with imprisonment for life (where life is the maximum), or with fine, or with both.

Offence Attempted	Substantive Section	Attempt Punishment (Sec 18)
Attempt to commit PSA	Section 3 / Sec 4	Up to half of life imprisonment term / fine
Attempt to commit Sexual Assault	Section 7 / Sec 8	Up to 2.5 Years imprisonment + Fine
Attempt to commit Sexual Harassment	Section 11 / Sec 12	Up to 1.5 Years imprisonment + Fine

Prosecution Distinction between Preparation and Attempt: Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. Attempt is the direct movement towards commission after preparations are made (e.g., undressing the child with sexual intent constitutes attempt under Sec 18 r/w Sec 3).

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30. Section 19: Mandatory Reporting of Offences

Section 19 institutes an absolute statutory mandate requiring any person who has apprehension or knowledge that an offence under POCSO has been committed, or is likely to be committed, to report the same. This provision shifts sexual abuse from a private domain into a matter of state concern.

Analysis of Statutory Clauses under Section 19:

1. **Section 19(1):** Any person (including neighbors, relatives, doctors, teachers) who has apprehension that an offence has been or is likely to be committed **shall** provide information to the Special Juvenile Police Unit (SJPU) or local police.
2. **Section 19(2):** Specific duty imposed on persons in charge of institutions (orphanages, schools, hospitals, creches) to report forthwith upon gaining knowledge.
3. **Section 19(3):** Recording of report: Police shall record in writing, read over to informant, enter in prescribed book (GD/FIR), and assign an entry number.
4. **Section 19(5):** Mandatory reporting by police to the **Child Welfare Committee (CWC)** within 24 hours of recording the report.
5. **Section 19(6):** Provision of immediate emergency medical care and protective custody for the child where required.
6. **Section 19(7):** Absolute immunity for informants acting in good faith: No person shall incur civil or criminal liability for providing information under Section 19.

31. Tension between Mandatory Reporting and Adolescent Consensual Relationships

A critical practical dilemma in Rajasthan and across India involves cases where doctors examine pregnant girls aged 16–17 who are in consensual, non-exploitative romantic relationships or customary child marriages.

High Court Jurisprudence & Law Commission 283rd Report

High Courts (Delhi, Madras, Karnataka) have observed that doctors under the Medical Termination of Pregnancy (MTP) Act face a dilemma between patient confidentiality and Section 19 POCSO. The Supreme Court in *X v. Principal Secretary, Health & Family Welfare (2022)* held that registered medical practitioners are exempted from disclosing the identity of adolescent minor girls seeking safe abortion under MTP, balancing bodily autonomy with statutory protection.

APO Practical Guidance: In consensual adolescent matters, while police must register the FIR under Section 19, the Prosecution must refrain from demanding mechanical custodial arrest of the young adolescent partner, prioritizing the psychological rehabilitation of the minor under the juvenile framework.

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32. Section 20: Obligation of Media, Studio, and Photographic Facilities

Any personnel of media, hotel, photographic studio, internet service provider, or print facility who comes across material exhibiting child sexual abuse is under a statutory obligation to report it immediately to the SJPU or local police.

33. Section 21: Punishment for Failure to Report or Record

Sub-Section	Defaulting Party	Prescribed Sentence
Section 21(1)	General person / Medical practitioner / School staff failing to report	Imprisonment up to 6 months, or fine, or both
Section 21(2)	Person in-charge of company/institution failing to report	Imprisonment not less than 1 year, and fine
Section 21(3)	Police officer failing to record information under Sec 19	Imprisonment not less than 6 months, extending to 1 year + Fine

34. Section 22: Punishment for False Complaint or False Information

Section 22 addresses false, malicious, or fabricated allegations under POCSO. Any person who makes a false complaint or provides false information with the intent to humiliate, extort, or defame shall be punished with imprisonment up to **six months**, or fine, or both.

Crucial Exception (Section 22(2)): *No child shall be punished* under this section for making a false complaint. The statutory protection prevents children from facing criminal liability if an allegation turns out to be unproven or retracted.

35. Section 23: Absolute Prohibition on Disclosing Victim Identity

Prohibitions under Section 23:

- No person shall make any report or present any media comments regarding a child which discloses identity, name, address, school, photograph, or family details;
- Disclosure permitted only if the Special Court grants written permission, being satisfied that it is in the child's best interest;
- **Punishment (Sec 23(4)):** Imprisonment not less than **six months**, extending to **one year**, or fine, or both.

Nipun Saxena v. Union of India (2019) 2 SCC 703

The Supreme Court held that the ban on revealing identity under Section 228A IPC and Section 23 POCSO is absolute. It applies equally to deceased victims. No electronic media, print journalist, or police press release can reveal any fact leading to identification.

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36. Section 24: Procedure for Recording Statement by Police

Section 24 codifies child-friendly protocols for recording statements by investigating officers, designed to eliminate intimidation and secondary victimization.

Mandatory Protocols under Section 24:

1. **Location [Sec 24(1)]**: Statement shall be recorded at the residence of the child or at a place of the child's choice, and as far as practicable by a woman police officer not below the rank of sub-inspector;
2. **Civilian Attire [Sec 24(2)]**: The police officer shall **not be in police uniform** while recording the statement of the child;
3. **Prohibition of Custodial Detention [Sec 24(3)]**: The police officer shall ensure that the child does not come in contact with the accused;
4. **Night Detention Prohibited [Sec 24(4)]**: No child shall be detained in the police station in the night for any reason whatsoever;
5. **Presence of Support Person [Sec 24(5)]**: Statement may be recorded in the presence of parents, guardians, or a social worker/support person in whom the child reposes trust.

37. Section 25: Recording Statement by Magistrate under Section 164 CrPC

Section 25 mandates the judicial recording of the victim's statement by a Judicial Magistrate without delay. Under the modern scheme of Section 25 read with Section 164(5A) CrPC (Section 183 BNSS):

- **Immediate Referral**: The Investigating Officer must produce the child before the nearest Judicial Magistrate immediately after registration of the FIR.
- **Absence of Accused & Counsel**: The statement must be recorded in the presence of parents or support persons, but in the strict absence of the accused and defence advocate.
- **Audio-Video Recording**: As far as possible, the statement should be recorded using audio-video electronic means.
- **Direct Narration**: The Magistrate must ensure the child is speaking freely without coaching, threats, or duress.

Feature	Police Statement (Sec 24 POCSO / 161 CrPC)	Magistrate Statement (Sec 25 POCSO / 164 CrPC)
Evidentiary Value	Cannot be used as substantive evidence; only for contradiction (Sec 162 CrPC)	Used for corroboration (Sec 157 IEA) and contradiction (Sec 145 IEA)
Uniform Requirement	Mandatory plain/civilian clothes	Judicial decorum maintained without intimidatory robes
Signature of Child	No signature permitted on police statements	Duly signed/thumb-impressed and endorsed by Magistrate

APO Mains Examination Point: If a child turns hostile during trial, the Public Prosecutor must confront the witness with her Section 164 statement under Section 145 Evidence Act, seeking leave of the Court to cross-examine under Section 154 Evidence Act.

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38. Section 26: Special Measures for Recording Statement of Child

Section 26 provides statutory safeguards for children facing physical disabilities, mental trauma, or communication barriers:

Statutory Provisions under Section 26:

- **Translators and Interpreters [Sec 26(1)]:** If the child has difficulty in communicating, the services of an interpreter or special educator shall be utilized, on payment of prescribed fees;
- **Special Educators for Intellectual Impairments [Sec 26(2)]:** In case of a child with mental or physical disability, the assistance of a special educator or a person familiar with the manner of communication shall be secured;
- **Video-Link Facilities [Sec 26(3)]:** Permitted to record statement through video linkage to prevent direct courtroom trauma;
- **Frequent Pauses [Sec 26(4)]:** The Magistrate or Court shall ensure the child is granted frequent breaks during recording.

39. Section 27: Medical Examination of the Child Victim

Section 27 governs the forensic and medical examination of child victims, establishing procedural safeguards alongside Section 164A CrPC:

Conduct by Female Doctor [Sec 27(2)]

Medical examination of a female child shall be conducted only by a

woman doctor

. Failure to adhere to this requirement violates statutory procedure and compromises evidentiary integrity.

Presence of Trusted Guardian [Sec 27(3)]

The child is entitled to have a parent or any other person in whom the child reposes trust present during the entire course of medical examination.

40. The Absolute Ban on the "Two-Finger Test"

The invasive "two-finger test" (per vaginum examination to assess vaginal laxity or sexual habituation) has been completely outlawed by the Supreme Court.

State of Jharkhand v. Shailendra Kumar Rai (2022) SCC OnLine SC 1494

The Supreme Court reiterated that conducting the two-finger test on a rape/POCSO victim is a gross violation of her dignity, privacy, and bodily integrity under Article 21. Any medical practitioner conducting the test is guilty of misconduct. Vaginal laxity has zero forensic relevance in establishing sexual assault on a minor.

Rajasthan APO Forensic Guidance: APOs must rely on forensic medical protocols under POCSO Rules 2020: collection of swabs (vulval, vaginal, anal, oral), DNA sampling, clothing preservation, blood toxicology, and documentation of external injuries (bruises, contusions) to establish contact without relying on antiquated virginity notions.

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41. Section 28: Designation of Special Courts

To secure speedy, specialized, and child-sensitive adjudication, Section 28 provides for the establishment of Special Courts:

Key Statutory Mandates under Section 28:

- The State Government in consultation with the Chief Justice of the High Court shall designate for each district a **Court of Session** to be a Special Court to try offences under the Act;
- Where a Court of Session is already designated as a Special Court under the Commissions for Protection of Child Rights Act, 2005, it shall function as the Special Court under POCSO;
- The intention is to avoid delays inherent in regular Magisterial committal proceedings.

42. Section 31: Application of Code of Criminal Procedure, 1973

Section 31 bridges the POCSO Act with the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023):

- **Section 31(1):** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court.
- **Deeming Fiction:** The Special Court is deemed to be a **Court of Session**, and the person conducting prosecution before it is deemed to be a Public Prosecutor.

43. Jurisprudential Core: Direct Cognizance without Committal (Section 33 vs. Section 193 CrPC)

Under Section 193 of the CrPC, a Court of Session cannot take cognizance of any offence as a court of original jurisdiction unless the case has been formally committed to it by a Magistrate under Section 209 CrPC.

P.R. Venugopal v. State of Kerala & Gangula Ashok v. State of A.P.

By virtue of **Section 33(1) of the POCSO Act**, the Special Court is empowered to *take cognizance of any offence without the accused being committed to it for trial*. Section 33 overrides Section 193 CrPC. The police may file the charge sheet directly before the Special Court, eliminating committal delays.

Procedural Stage	Standard Sessions Trial (CrPC)	Special POCSO Court Trial
Cognizance	Taken by Magistrate (Sec 190 CrPC); committed u/s 209	Taken directly by Special Court u/s 33(1) POCSO
Trial Atmosphere	Open Court by default (Sec 327 CrPC)	Mandatory In-Camera (Sec 37 POCSO)
Cross-Examination	Conducted directly by defence counsel	Questions routed through presiding Judge (Sec 33(3))

Rajasthan APO Mains Note: When asked about the jurisdiction of Special Courts, emphasize that direct cognizance without committal under Section 33(1) preserves prosecutorial momentum and protects the child victim from multiple court appearances.

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44. Section 29: Presumption as to Certain Offences (The Reverse Burden)

Section 29 is a departure from traditional criminal jurisprudence, shifting the burden of proof to the accused once the prosecution establishes foundational facts:

Text of Section 29 POCSO Act:

Where a person is prosecuted for committing or abetting or attempting to commit any offence under **sections 3, 5, 7 and section 9** of this Act, the Special Court **shall presume** that such person has committed or abetted or attempted to commit the offence, as the case may be, *unless the contrary is proved*.

45. Section 30: Presumption of Culpable Mental State

Section 30 creates a statutory presumption regarding the mental state of the accused:

- **Section 30(1):** In any prosecution for an offence under this Act requiring a culpable mental state, the Special Court **shall presume** the existence of such mental state.
- **Rebuttal Threshold (Sec 30(2)):** The accused must prove beyond reasonable doubt that they had no such mental state.
- **Scope of Mental State:** Includes intention, motive, knowledge of a fact, and belief in or reason to believe a fact.

46. Judicial Interpretation of Foundational Facts for Presumption

The presumption under Section 29 is not automatic; it does not relieve the prosecution of its initial duty to establish foundational facts.

Babu v. State of Kerala (2010) & Vijayee Singh v. State of U.P. (1990)

The Supreme Court held that statutory presumptions like Section 29 and 30 trigger only after the prosecution proves the foundational facts: (1) that the victim was a child, and (2) that an incident of sexual assault took place. Only then does the burden shift to the defence to prove the contrary.

Standard for Prosecution	Standard for Accused to Rebut Presumption
Must prove foundational facts (minority + act) Beyond Reasonable Doubt	Rebuttal requires establishing defence on Preponderance of Probabilities

Rajasthan APO Examination Application: Answering questions on Section 29: emphasize that Section 29 creates a legal presumption ("shall presume"), not a discretionary one ("may presume"). However, if the victim's testimony is inherently contradictory and lacks medical corroboration, foundational facts fail, and the presumption cannot be invoked.

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47. Section 32: Special Public Prosecutor (SPP)

Section 32 outlines the appointment and qualification requirements for the prosecution cadre under the POCSO framework:

Statutory Requirements under Section 32:

- **Section 32(1):** The State Government shall appoint a Special Public Prosecutor for every Special Court for conducting cases exclusively under this Act;
- **Section 32(2):** A person shall be eligible to be appointed as SPP only if they have been in practice as an advocate for **not less than seven years**;
- **Section 32(3):** Every Special Public Prosecutor appointed under this section is deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code of Criminal Procedure, 1973.

48. Dual Duty of the Special Public Prosecutor in POCSO Trials

Unlike standard adversarial trials, an Assistant Prosecution Officer or Special Public Prosecutor in a POCSO court operates under statutory and ethical child-protection duties:

- **Protector of the Child's Interests:** The SPP must brief the child in a child-friendly atmosphere prior to trial, explaining the courtroom setting without coaching on facts.
- **Scrutinizing Questions:** Under Section 33(3), the SPP must ensure that hostile, aggressive, or embarrassing questions proposed by the defence are actively objected to and filtered by the Judge.
- **Pursuing Interim Compensation:** The SPP must proactively move applications under Section 33(8) for interim monetary relief to support medical care, rehabilitation, and education.

49. Section 40: Right of Child to Legal Assistance & Support Person

Section 40 guarantees legal assistance to the child victim and their family, working alongside the prosecution:

Private Legal Counsel [Sec 40 Proviso 1]

The family or guardian of the child shall be entitled to the assistance of a legal counsel of their choice for the child in trial proceedings.

Free Legal Aid via DLSA [Sec 40 Proviso 2]

If the family cannot afford legal representation, the Legal Services Authority (DLSA) shall provide an advocate to assist them free of cost.

Role of Support Persons: POCSO Rules 2020 & Bachpan Bachao Andolan v. UOI

The Supreme Court recognized that under Section 39 and 40, a 'Support Person' appointed through the Child Welfare Committee accompanies the child throughout investigation, medical examination, and trial, offering emotional and logistical support without interfering with substantive witness examination.

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50. Section 33: Procedure and Powers of Special Court

Section 33 sets out the procedural charter governing trial management before the Special Court, balancing the rights of the accused with the psychological safety of the child.

Step-by-Step Procedure under Section 33:

1. **Original Cognizance [Sec 33(1)]:** Special Court may take cognizance without committal upon receiving a police report or complaint;
2. **Child-Friendly Atmosphere [Sec 33(2)]:** The Court shall create a child-friendly environment, permitting the presence of parents, guardians, or a support person;
3. **Judicial Intermediation of Questions [Sec 33(3)]:** The Special Court shall ensure the child is not directly cross-examined by the defence counsel. The counsel shall communicate questions through the presiding Judge, who puts them to the child in an appropriate manner;
4. **Protection from Aggressive Cross-Examination [Sec 33(4)]:** The Court shall not permit aggressive questioning or character assassination of the child;
5. **Evidence Continuity [Sec 33(5)]:** Child's testimony should be recorded without repeated adjournments;
6. **Frequent Breaks [Sec 33(6)]:** The Court shall grant breaks to the child during examination to mitigate exhaustion or distress.

51. Section 33(8): Statutory Compensation Regime

Under Section 33(8) read with Rule 9 of the POCSO Rules, 2020, the Special Court is empowered to direct payment of compensation to the child:

- **Interim Compensation:** The Court may, on its own motion or on an application by the Special Public Prosecutor or the child, order interim compensation for immediate medical care, safe shelter, or rehabilitation.
- **Final Compensation:** Awarded upon conclusion of trial, regardless of whether the trial culminates in conviction or acquittal (where the factum of abuse is established).
- **Fund Source:** Disbursed by the District Legal Services Authority (DLSA) out of the Victim Compensation Fund under Section 357A CrPC.

Nipun Saxena v. Union of India (Victim Compensation Directives)

The Supreme Court mandated that interim compensation in POCSO cases must be paid within 30 days of the order, emphasizing that financial rehabilitation must run concurrently with trial proceedings.

APO Practical Insight: Section 33(4) acts as a statutory shield. When defence counsel attempts to introduce questions regarding past sexual history or character of the child, the APO must object under Section 33(4) POCSO and Section 53A of the Indian Evidence Act.

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52. Section 34: Offence Committed by Child & Determination of Age

Section 34 resolves jurisdictional boundaries when an offence is committed by a child or when the age of the accused/victim is disputed:

- **Offence Committed by a Child [Sec 34(1)]**: Where any offence under this Act is committed by a child (juvenile in conflict with law), such child shall be dealt with exclusively under the **Juvenile Justice (Care and Protection of Children) Act, 2015**, not by the Special Court;
- **Age Determination by Special Court [Sec 34(2)]**: If a question arises whether a person is a child or not, the Special Court determines the age after satisfying itself and recording reasons in writing.

53. Section 35: Strict Time Limits for Evidence and Disposal

Section 35 establishes statutory timelines to ensure speedy trials:

Section 35(1) - Evidence of the Child

The evidence of the child shall be recorded within a period of **thirty days** of the Special Court taking cognizance of the offence. Adjournments may be granted only for reasons recorded in writing.

Section 35(2) - Final Disposal of Trial

The Special Court shall complete the trial, as far as possible, within a period of **one year** from the date of taking cognizance of the offence.

54. Section 36: Shielding the Child from the Accused

Section 36 establishes an absolute right: **The child shall not see the accused at the time of testifying.**

- The Court shall ensure that the child is not exposed to the accused while recording testimony.
- Achieved using single-way mirrors, curtains, partitions, or video conferencing technology.
- **Safeguard for the Accused**: The defence advocate maintains auditory access and can communicate with the accused, ensuring fair trial rights under Article 21 are preserved.

55. Section 37: In-Camera Trial Mandate

The Special Court shall conduct the trial **in camera**, in the presence of only the parties, advocates, and necessary court staff, excluding the general public and unauthorized persons.

Alakh Alok Srivastava v. Union of India (2018) 12 SCC 394

The Supreme Court issued nationwide directives for setting up child-friendly 'Vulnerable Witness Deposition Centres' (VWDC) equipped with audio-video links, waiting rooms, and separate entry points to guarantee compliance with Sections 36 and 37.

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56. Model Framing of Charge for Rajasthan APO Mains Examination

IN THE COURT OF SPECIAL JUDGE (POCSO ACT), JAIPUR METROPOLITAN

State of Rajasthan v. XYZ (FIR No. 123/2024, P.S. Sadar)

CHARGE UNDER SECTION 5(m) READ WITH SECTION 6 POCSO ACT

I, [Name of Presiding Judge], Special Judge, POCSO Act, Jaipur, do hereby charge you, the accused **XYZ**, as follows:

That you, on or about the 15th day of March, 2024, at about 4:00 PM, at village ABC, within the jurisdiction of this Court, committed penetrative sexual assault on victim 'M', who was a child aged 9 years (being a child below twelve years of age), and thereby committed an offence of Aggravated Penetrative Sexual Assault punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.

57. High-Yield APO Mains Descriptive Questions & Model Answers

Q1. Discuss the statutory presumption under Section 29 of the POCSO Act and its constitutional validity. (5 Marks)

Answer Outline:

Section 29 mandates that in prosecutions under Sec 3, 5, 7, and 9, the Court "shall presume" the accused committed the offence. The constitutional validity has been upheld because the reverse burden is triggered only after the prosecution proves the foundational facts (age and occurrence of act) beyond reasonable doubt. The accused can rebut the presumption on the standard of preponderance of probabilities.

Q2. How did the Supreme Court resolve the 'skin-to-skin' touch controversy under Section 7 POCSO? (5 Marks)

Answer Outline:

In *AG for India v. Satish*, the Supreme Court reversed the Bombay High Court ruling, holding that physical touch under Section 7 does not require direct skin-to-skin contact. The gravamen of the offence is "sexual intent" accompanied by physical contact. Restricting it to skin contact would defeat the protective purpose of the Act.

Q3. Explain the special trial safeguards provided to child victims under Sections 33, 36, and 37. (10 Marks)

Answer Outline:

(1) Direct cognizance without committal under Sec 33(1); (2) Child-friendly environment with questions routed through the Judge under Sec 33(3); (3) Prohibition of aggressive cross-examination under Sec 33(4); (4) Interim compensation under Sec 33(8); (5) The child must not see the accused during testimony under Sec 36; (6) Mandatory in-camera trial under Sec 37.

Author's Concluding Note: This master treatise covers all POCSO syllabus topics for the Rajasthan APO Mains Examination. Candidates are advised to review the full 1188-page comprehensive guidebook by Dr. Himanshu Mishra for full coverage of IPC, CrPC, Evidence Act, SC/ST Act, Arms Act, Rajasthan Excise, and JJ Act.

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