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Age of Consent Law under the POCSO Act: Whether it is a Boon or Bane for The Society

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ABSTRACT

Objective of the Study: The child abuse was considered as a heinous crime and there was no special law catering to this crime. Therefore, the legislature provided for the POCSO Act 2012 to deal with the crimes related to the children.

But the increase in the number of cases under POCSO Act shows that the law needs amendment in the law. The judiciary while adjudicating the cases related to POCSO Act laid down several guidelines to interpret the law and also suggested for the change in the law as the present law was not suitable in the prevalent society.

Research Methodology: The researcher will use the doctrinal method to analyse the law and its implications. The researcher would also like to discuss some landmark case laws related to the subject.

Analysis: The researcher had analyzed that the present law wherein the age of the child is 18 years old needs to be reduced as there are huge number of cases which fall in the category of POCSO Act 2012 are consensual relationship. Due to the digital and social media era, the children are exposed to the adult content and therefore considers such relationship to be normal and also considers that they have a right on their own body thereby such cases can be fall in some other category of offences and cannot bring under the POCSO Act 2012.

Implications: The law on age of consent needs to be revised as per international standards and in many other countries is 16 years.

In order to use the Act more effectively and fairly in dealing with criminals while also preventing its abuse by unscrupulous members of society, a number of gaps and inconsistencies have been found during its operation and implementation at the local level. These issues need to be fixed.

Keywords: POCSO Act 2012, Age of Consent

I. INTRODUCTION

India had pledged to uphold every child's right to life, development, protection, and participation as a signatory to the UN Convention on the Rights of the Child (UNCRC). To this

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end, the National Policy for Children (NPC), 2013, which confirms the Government's commitment to realising the rights of all children in the nation, was adopted by the Ministry of Women and Child Development on April 26, 2013. It considers that every individual under the age of 18 is a child and that childhood is a crucial stage of life with its own value, and that a long-term, sustainable, multifaceted, integrated, and inclusive approach is required for the healthy development and protection of children².

It is assumed that law is made for the society and it should be such that it should be for the betterment of the society. But there are various laws which are not suitable as per the societal demand or societal change and therefore it is very important that such laws should either be repealed or amended.

One of the less prevalent topics in India's criminal justice system was child sexual abuse as people were concerned more about the reputation of the house and also unaware of the rights available for the children due to illiteracy and poverty. Due to Indian society's habit to conceal such crimes, very limited historical discussion had been conducted on the subject and therefore not much data provided for the study. But more recently, a number of studies have shown the prevalence of child sexual abuse and the criminal justice system's response to it, particularly in the wake of the 2012 POCSO Act, which protects children from sexual offences.³

Protection of Children from Sexual Offences Act (POCSO) 2012 was a special legislation and also gender- neutral law provided for the safety and protection of children below the age of 18 years whereas Indian Penal Code provided for rape under section 375 with a woman below the age of 18 years without consent and not for the criminalization of the consensual relationships of consenting adolescents.

Sexual inclination and romantic relationships are ubiquitous phenomena with developmental importance, particularly during adolescence. The establishment of a romantic connection is one of the phase's most notable characteristics. Healthy romantic relationships among adolescents serve as a developmental pathway, shaping their personal views on intimate relationships and sexuality and having a lasting impact on their self-esteem and general well-being as they enter adulthood.

Nowadays in this internet era wherein many young children enter in sexual relationship with their free consent also fall in the trap of this law thereby affecting their Right to Life provided

² Ajoy Kumar Sardar, "Child Abuse in India: Legislative and Judicial Perspectives" 7 *South Asian Law Review Journal* 226-234 (2021).

³ Nautiyal Pallavi and Mal Arun, "Towards Protection of Children and against sexual abuse: No child's play", 3 *NUJS Law Review* 77-80 (2010).

under fundamental right. Also, as per this law, if any child below the age of 18 years if enters into consensual relationship then would be under the radar of POCSO Act 2012 leads to the interpretation that human body of all the individuals under the age of 18 years subject to the property of state and no person below the specified age i.e., 18 years would be permitted to have pleasures connected with one's own body and thereby taking away the right to life and infringement of fundamental right.

Minors between the ages of 16 and 18 who engage in a consensual act that meets the legal definition of sexual activity risk being charged under POCSO. While these incidents of adolescent sex may not always result in a juvenile boy's conviction, the law allows for denial of bail and protracted imprisonment.

Despite the fact that it has been almost ten years since this legislation was ratified, relatively few research had been conducted that specifically address its implementation and functioning. Despite the fact that a few studies have addressed the topic of teenage consenting sex, there is currently no literature accessible that specifically discusses the legal impact of cases that have been reported in the context of love relationships.

The Indian jails nowadays are being flooded with inmates facing a trial under POCSO Act and almost all the case are being related to romantic relationship that are consensual but below the age of 18 years. Infact, in the opinion of many judges and Chief Justice of India was of the opinion to lower the age of consent from 18 to 16 as per the present-day scenario.

Since colonial times, the legal elements of adolescent sexuality have experienced various adjustments. The age of consent was raised from 10 to 12 to 14 to 16 to 18 years by the 2013 modification, in order to comply with the then-newly adopted POCSO Act. The legislation disregards the possibility of a minor girl participating in sexual behaviour freely, effectively desexualizing her. The law that criminalises adolescent sexuality either ignores or appears to ignore social realities.

An examination of POCSO cases in India ten years after the passage of The Protection of Children from Sexual Offences (POCSO) Act, which explicitly addresses child sexual abuse, has revealed implementation flaws, including an increase in the number of cases that are still pending and a high proportion of acquittals.

Defining the Nature of Acts the judiciary has made an effort to right any wrongs that the legislative had created. The courts deemed it necessary to create a distinction between the kind of actions that should and should not be subject to this onerous law.

Other courts have concurred with the court's obiter that POCSO has turned into a tool in the

hands of some social groups to subvert the legal system.

In cases where the outcome of the love affair is marriage, the judiciary has reportedly been sympathetic and has readily granted bail.

The judgement in the following cases clearly provided for the gap or grey area in the present POCSO Act and suggests speedy addressal of the situation to protect the youth from the misuse of the law from certain social groups.

The researcher would briefly discuss the following cases to show the real picture of the society and how the law was being misused and created a room for the various interpretations of the law.

II. LANDMARK CASE LAWS UNDER POCSO ACT 2012

(A) Praduman Vs State (Govt of NCT)⁴

This would be a remarkable case wherein the police acted arbitrarily and arrested the accused on the parent's complaint.

In this case the statements of the complainant changed thrice and this shows the mere misuse of the law. The complainant MLC was conducted and she was found to be pregnant and therefore the family of the complainant to pressurize the accused filed the case. They were student of the same school and fell in love and thereafter enter into consensual sexual relations.

In many of the POCSO Act case arrests led to the acquittals clearly depicts that the law provided for the savior and protection of minor children is not in tune with the societal realities and law needs to be amended to protect the youth and their rights and their bodily freedom.

(B) Jayantibhai Babulbhai Alani Vs. State of Gujrat⁵

In this case the girl was a minor and fell in love with a boy who was major and eloped from her house from her parent's custody. Thereafter the Police lodged the FIR under POCSO Act and IPC Act and arrested the accused on the basis of the registered FIR.

The High Court of Gujrat observed that the trial court only looked into the literal meaning of the statute and under POCSO Act if the girl was minor then the sexual offence even if it was with the consent was immaterial and rejected the bail application before the trial court.

But as Higher Courts not only look into the literal meaning of the statute but also looked into the purposive interpretation of the statute was of the opinion that the purpose of POCSO Act

⁴ BAIL APPLN. 2380/2021.

⁵ (2018) SCC Online Guj. 1223.

was to overcome with the heinous crimes and sexual abuses with the minor children and should protect them from such crimes. In the present case, the court observed from the statement of the accused and the intimate photographs of the complaint and accused which clearly showed the romantic relationship between them and therefore was of the consideration that the accused should be enlarged on bail.

(C) Vijayalaxmi Vs. State⁶

In this case also the Madras High Court observed that high time wherein the legislature should relook the statute to amend the POCSO Act as the court not only dismisses the case but also opine that the love relationship cases flooded in number and therefore serious implications would follow if the corrective steps and timely amendment do not take place.

⁶Criminal. Original Petition. No. 232 (2021).