



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

POCSO and the Question of Consent: A Look at the Issues

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a comprehensive law aimed at protecting children from sexual abuse and child molestation. It defines a child as anyone under the age of 18, and criminalizes a wide range of sexual offenses against children, including penetrative sexual assault, sexual harassment, and child pornography. The POCSO Act was enacted in response to the increasing number of child abuse cases in India. This is also a way to address the shortcomings of the Indian Penal Code (IPC), which fails to protect minors from committing sexual offences. The POCSO Act is considered a very creative law to protect children from serious crimes.

However, this law still faces many problems. One of the issues is that when a minor child enters into a consensual relationship with a boy who may be a minor or a professional, the boy is registered under the POCSO Act. The law also punishes two minors having consensual sex if the consent is explicit, voluntary, willing and clearly stated.

Since POCSO banned all sex activities for those under 18 years of age, consenting to sex among teenagers has become the norm today, at least among the youth in the city, and thus has come under the radar of the authorities. However, the development of the law has been slow. For this reason, problems may occur if people under the age of 18 violate the sexuality law. For example, it would not be reasonable to treat a 17-year-old child as a criminal deserving of the death penalty for consenting to a 16-year-old child. Therefore, even a law like POCSO can have negative consequences. It should also be noted that these young people do not know that this strict law can have serious consequences, thus creating a moral concept of abstinence from sexual intercourse for children. Criminalizing consenting juvenile relationships which have prevailed over a long time might have an awful and detrimental effects on the society. This is

a loophole that can be exploited by police and families to punish young people who enter into relationships without their families seeing them, due to differences in race, region, class and religion.

High Courts warns of Deficiency

A single judge bench of Bombay High Court led by Justice Anuja Prabhudessai noted in her order passed on 26th April, 2023 in the case of Imran Iqbal Shaikh Vs The State of Maharashtra and anr which involved consensual sexual relationship between a 22 year old man and a minor girl highlighted 'It needs to be noted that the POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment etc. and contains stringent penal provisions as to safe guard the interest and the well being of the children. The object is certainly not to punish minors in romantic or consensual relationship and brand them as criminals.

A similar concern was raised by Madras High Court which was led by Justice Parthiban where he stated that connection between youngsters or adolescents and young people was "not abnormal" but a result of natural physical attraction and suggested reducing the age of consent.

Shubham Pal v. Delhi and Others. On July 12, 2023, Delhi High Court Judge Justice Vikas Mahajan granted bail to a 23-year-old man who had an affair with a 17-year-old girl. Justice Mahajan noted that the main objective of the POCSO Act is to protect children from sexual exploitation. This act does not seek to criminalize young people's consent. Justice Mahajan's examination found that the 17-and-a-half-year-old girl showed a level of maturity and intelligence that suggested she could have had a relationship with the accused. The judge said that the physical relationship between the two was the product of their own will.

Chief Justice of India D.Y Chandrachud on December 10, 2022 asked Parliament to decide on the age of consent under the POCSO Act. He was speaking at the first meeting of the two-day National Plan for Implementation of POCSO Act 2022. In his speech, the CJI said that unfortunately, the way criminal law operates can cause great harm to the victims.

While the minimum age of consent for sex in India is 18, the situation is very different in

countries such as Angola and the Philippines, where the age of consent for sex is only 12, the lowest age in the world. Most countries require teens to be 14 or older to have sex.

CITATIONS

- The Protection of children from sexual offences act, 2012 [No.32 of 2012], Acts of Parliament, 2012
- Livemint, <https://www.livemint.com/news/india/minor-victim-had-sufficient-maturity-says-delhi-hc-while-granting-bail-in-pocso-case-11691544054688.html> (25th Mar.2024)
- Shubham Pal v. State Of Nct Of Delhi & Ors, BAIL APPLN. 489/2023 & CRL.M.A. 12824/2023
- Imran Iqbal Shaikh v. The State of Maharashtra and anr, BAIL APPLICATION NO.997 of 2022