

POCSO Act: Limitation Clause on Serial Offences Against Children

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A single bench of the Madras High Court recently allowed a petition seeking to quash a case of kidnap, aggravated penetrative sexual assault and aggravated sexual assault of a minor. The court reasoned that adolescence and young adulthood form a continuum because of the physical, biological, neurological, and social changes that occur during this time. This has highlighted the need for rethinking of the existing approach towards adolescent sexuality in the Protection of Children from Sexual Offences (POCSO) Act, 2012.

In news: The limits of POCSO

Placing it in syllabus: Society

Dimensions

- Limitations under the Act and also Crpc
- Impact of such Limitations
- Solutions

Content:

Limitations under the Act and also CrPC:

In its essence the POCSO Act considers the following:

- **Strict Provisions of Rape:** Aggravated penetrative sexual assault under the Protection of Children from Sexual Offences (POCSO) Act, 2012 is the equivalent provision for aggravated rape.
- A person can be charged with this offence in certain

aggravating circumstances, such as if the rape occurs within a relationship of trust or authority, or if it leads to pregnancy, among others.

- **Absolute age bar:** the consent of a person under the age of 18 is irrelevant, regardless of the nature and circumstance of the sexual interaction, or the particulars of the person with whom it takes place. This means that any sex with a minor is rape.

Limitations of POCSO relating to adolescent sexuality:

- POCSO takes an absolutist approach when it comes to the sexual interactions of adolescents with other young people.
- Child rights activists argue that this approach of POCSO ignores the natural sexual tendencies of adolescents.
- The five State studies on the functioning of Special Courts under the POCSO Act, conducted by the **Centre for Child and the Law, National Law School of India University, Bengaluru**, have demonstrated that these de facto consensual cases are complicated.
- While adolescents can and do choose to have intercourse, it is a fact that they are still children, and their nascent sexual autonomy is susceptible to abuse.
- **For Example:** Consider the case of a relationship between two minors aged 15 and 17. When the elder between the two turns 18, he/she is considered an adult. In the eyes of the POCSO, the person commits sexual assault if he/she engages in sexual activity and is liable to be punished as per the law.
- Neither the founding documents nor the listed categories of offences give a sense of what the limits of POCSO were meant to be.
- The Parliamentary Committee (Rajya Sabha) which considered the POCSO Bill, 2011 had, in fact, criticised the clause providing for the possibility of consent in

cases of sexual intercourse with minors between the ages of 16 and 18.

- It believed that a uniform age of 18 would ensure that trials of child rape would focus on the conduct of the accused and the circumstances of the offence, instead of putting victims on trial as is often the case when the consent of the victim is in question.

Impact of such Limitations:

Scope for misuse of absolute age limit:

- The absolute age line of POCSO has not prevented the insensitive assessment of minors' consent.
- In such circumstances, POCSO can and does become a tool for the persecution of young people in consenting sexual relations.

Inconsistent Adjudication:

- Adolescence and young adulthood form a continuum because of the physical, biological, neurological, and social changes that occur during this time.
- The implication is that people within this age group may be clubbed together notwithstanding the legal line drawn at 18.
- This contradiction created by the very nature of adolescence has led to inconsistent and unprincipled adjudication.
- It has forced courts to choose between applying the law and doing justice, especially in cases where the minor victim has willingly eloped with or married the accused or is carrying his child, for imprisoning him would only do her harm.

Madras High Court Verdict:

- A single bench of the Madras High Court recently allowed a petition seeking to quash a case of kidnap, aggravated

penetrative sexual assault and aggravated sexual assault of a minor.

- the court relied on the **Statement of Objects and Reasons of POCSO**, which states that the law was enacted pursuant to **Article 15** of the Constitution, which allows the state to make special provisions for women and children, and the **UN Convention on the Rights of the Child**, to protect children from sexual assault, sexual harassment, and pornography.
- The judgment concluded that the case could be quashed because it was purely individual in nature and doing so would not affect any overriding public interest.
- However, in doing this, it ignored the established precedent against quashing cases of rape, a heinous and serious offence, held by the Supreme Court to be a public concern, and not a private matter.

Solutions:

- There is an urgent need for a **reconsideration of the absolutist approach** of POCSO when it comes to the sexual interactions of adolescents with other young people.
- Courts need to be able to strike a balance between the limited but developing capacity of adolescents to consent to sexual interaction and their vulnerability to being groomed, abused, and exploited.
- The legislature must deliberate on the core wrongs that POCSO is meant to address, so that valid conclusions may be drawn about what is the intent of the law, and what is clearly outside its purpose.

Mould your thought: The absolute age limit in POCSO Act with respect to the sexual interactions of adolescents with other young people creates challenges for justice. Critically evaluate.

Approach to the answer:

- Introduction
- Discuss the intent and the provisions of POCSO related to age
- Discuss the limitations of such provisions on adolescent sexuality
- Discuss the impact of these limitations
- Suggest a few solutions address the problems
- Conclusion