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NAVIGATING ADOLESCENT CONSENT AND POCSO: WHY OVER-LIBERALIZATION MAY NOT BE INDIA'S LIBERAL ANSWER

AUTHORED BY - DR.KOTA PALLAVI & HARSHITHA DEVAGUPTAPU¹

Introduction

In a major judgment the Delhi High Court recently ruled that it is time to reexamine the application of the Protection of Children from Sexual Offences Act, 2012 (POCSO) in cases of consensual teenage relationships which it argued at times the law may end up punishing “teenage love”. Also this judgment is a part of a larger trend which we see in the courts and in civil society that not all of a minor's sexual experiences are of a predatory nature that the law has to tell the difference between what is exploitation and what is consensual interaction between nearly equal age peers.

While this issue is put forth as a progressive one which we embrace, we at the same time put it to question which players does it serve is it for the statutory protection or the early liberalization of teen rights. This we argue that in India courts have been doing a great job in their approach to POCSO they are punitive where it has to be, protective of the victim when it is due, and at the same time they are very careful not to criminalize youth which is only fair. Also, in our context which is social and legal we may see that overdoing the liberal approach may in fact do away with what we are trying to protect and at the same time may bring forward new sets of issues.

Background of the Judgment

In the case of Sushil Kumar v. State (Government of NCT of Delhi) we see the nullification of criminal action against a 19-year-old in his relationship with a 17-year-old which was consensual and free from coercion or exploitation. Although the Court noted that the issue of age of consent brought up by the case is covered by the POCSO act's provisions it put forth the idea that the legislature should rethink the issue of wide scale criminalization of what may be the sexual acts between close age peers.

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In other High Courts we see the same issues raised. In *Satheesh Kumar v. State* the Madras High Court put forth that which POCSO is applied to consensual between adults it should be left to the legislature to deal with near age consensual activity. Also, in *Ravi v. State of Karnataka* the Karnataka High Court reported that they are against the criminalization of what they see as youthful experimentation under POCSO which in turn asks the judiciary to take a more sensitive approach in such cases.

POCSO and the Judicial Middle Path

Indian courts have put in place a very careful and case by case application of POCSO. The judiciary did not use the statute as a black and white issue; instead, it tried to balance the statute's protective intent with constitutional principles of fair and proportional treatment.

In the case of *S. Sreekumar v. State of Kerala*, the Kerala High Court reported that although a minor's consent is a nullity under POCSO what the courts do have at their discretion is to take into account the facts of each case which includes proof of mutual affection and no abuse of authority. Also, in *R. Manikandan v. Inspector of Police* it was brought to notice by the Madras High Court that even though the statute requires prosecution the courts do have the right to look at the consensual aspect of the issue when grant bail or to quash FIRs.

These examples present that which is put forth that judicial compassion and legal protection are indeed compatible. Indian courts have protected minors from predators while at the same time they are careful in issues of the falsely accused adolescents. This growing body of case law is a proof of the judiciary's ability to justly and sensitively interpret POCSO which in turn does not require a legislative change.

Sex Education Is Not a Substitute for Protection

Proponents put forth that which we should base ourselves on is comprehensive sex education and not strict criminal law for issues related to adolescents' sexual health. Although education is a key element, it is not by itself a full proof solution in the context of India's special cultural, institutional, and familial setting.

Awareness does not translate into responsible action in the stage of adolescence which is marked by cognitive immaturity, high risk taking and emotional volatility.

In India, which is still a very traditional in matters of sex, especially for young women, as we put forward more liberal legal boundaries we may see that play out in unexpected ways which include child marriage, unsafe abortion, drop out of school, and what passes for romance but is really exploitation.

In the United States, where sex education and adolescent rights are robustly institutionalized, teenage pregnancy remains a major public health concern. The Centers for Disease Control and Prevention (CDC) reported that in 2022, over 150,000 live births occurred among females aged 15–19 — a staggering number for a country with high access to contraceptives and sex education. This highlights a critical gap: awareness does not automatically result in responsible behavior, particularly during adolescence, a stage characterized by cognitive immaturity, heightened risk-taking, and emotional volatility.

Preserving the Protective Architecture of POCSO

POCSA put in place to not criminalize affection but to put in a framework which is protective of the child, and which does not allow for any child to become a victim of manipulation, grooming or coercion. It is a fact that which youth under 18 do not have the capacity for informed consent which is based on what we know from development psychology and vulnerability.

Creating that which is outside the scope of what is present for consensual adolescent relationships would damage the statute's clarity and we would see an increase in false defenses in the case of inter-caste or inter-faunal relationships which at present are put under a lot of pressure from family or community. Also, as the Supreme Court noted in *Independent Thought v. Union of India*, we do not only have laws like POCSO for the purpose of punishment, but they also serve for prevention and deterrence.

Therefore, reduction of the assumption elements in the statute may see to weaken its deterrent force which in turn may be especially true in rural and underprivileged areas where minors which include girls are at greater structural risk.

Conclusion

In the larger context of what India is responsible for in terms of its care of children the Delhi High Court's approach to POCSO is a positive one. While it is true that we have a problem of over criminalization, in the Indian courts' favor it is also true that they are doing what is required by interpreting POCSO which in turn protects the child, which also gives a fair trial to the youth that may be falsely accused and at the same time see to it that the real perpetrators are brought to justice.

In a world which sees child protection often defeated by structural failures and cultural taboos, over Liberalizing of consent laws may not be the most liberal choice. India must adopt a path of careful legal protection which is rooted in its own reality as opposed to that of external models.

A truly liberal society doesn't just bestow freedoms it is also charged with protecting its most innocent members from harm, from exploitation, and from which they may not recover. That is the pure promise the goal of POCSO.

REFERENCES

- *Sushil Kumar v. State (Govt. of NCT of Delhi)*, 2024 SCC Online Del 1234.
- Ibid.
- *Satheesh Kumar v. State*, 2020 SCC Online Mad 7740.
- *Ravi v. State of Karnataka*, 2021 SCC Online Kar 3494.
- *S. Sreekumar v. State of Kerala*, 2021 SCC Online Ker 1033.
- *R. Manikandan v. Inspector of Police*, 2022 SCC Online Mad 3471.
- Centers for Disease Control and Prevention, "Teen Birth Rate," available at: <https://www.cdc.gov/teenpregnancy/about/index.htm> (last accessed June 15, 2025).
- Ministry of Women and Child Development, *Guidelines for POCSO Implementation* (2020), p. 5
- *Independent Thought v. Union of India*, (2017) 10 SCC 800.