



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

RESTRUCTURING THE AGE OF CRIMINALITY OF JUVENILES

Authored By- Disha Singh

L.L.M. (Criminology)

Galgotias University

INTRODUCTION

A “juvenile is a human who is under the age of 18 years. But in India, here is considered to be the child’s physical or the chronological age, where the mental age is not considered. The Supreme Court judgment in case of *Ms. Eera, through Dr. Manjula Krippendorf vs State (Govt. Of NCT of Delhi) and Ors.*, where the question arose was “whether the word age in POCSO Act only includes physical age and not the mental age?” it held that “the sanguine purpose of the act is to safeguard the interest and well-being if the children at every stage of judicial proceeding. On reading the act, it is clear that it is gender neutral. In such a situation, to include the perception of mental competence of a victim or mental retardation as a factor will, really tantamount to causing violence to the legislation by incorporating a certain words to the definition. By saying “age” would cover “mental age” has the potential to create immense anomalous situations without there being any guidelines or statutory provisions.” Therefore, the statement by the SC clearly put the concept of using the mental age of a child for treating the child as a victim out of the question.

Recently in an interview, the current Chief Justice of India, Hon’ble Justice D. Y. Chandrachud, in a meeting made a recommendation about revisiting the age of juveniles as the court treats all the relationships among the minors as an offence under the POCSO Act, but the real question is put in front of the court when the minors are in a consensual romantic relationship. At this time, the question for “age of consent” is considered very viable and has been a grey area for the judiciary, as The “age of consent” been increased from sixteen to eighteen thanks to the POCSO Act. Due to this rise, it is now unlawful to get involved in consenting sexual activity with a minor as one of the partners.

The goal of the act, Prevention of Children from Sexual Offences Act, (hereinafter referred to as “POCSO” Act) to criminalize all sexual Regardless of whether consent is truly present among the

kids, it is still illegal for acts to be performed on individuals under the age of 18 because it is presumed by law that those under 18 are not of legal age to consent. This further casts doubt on the judiciary, as being in a consensual romantic relationship in the current era does not constitute an offense; thus, it leaves a larger blank space in the area of age of consent for minors, as the entire raising of the age limit is based on the assumption.

The statement of the CJI was answered by our government in the negative, as they believe it is for the benefit of the minors; therefore, the denial by the parliament has put more of the burden on the judiciary.

THE ISSUES WITH CHANGING THE “AGE OF CONSENT”

There can be a few problems that might be considered as the reasons for going against the advice of the judiciary.

1. **Tool to Control a Consensual Sexual Relationship:** The root of the issue is that the POCSO criminalizes both exploitation of young people's bodies and their general sexual expression. As a result, criminal law has evolved into a tool to control or stifle a non-exploitative, voluntary, consenting sexual relationship between two adolescents.
2. **Desexualizes Minor Girl:** Throughout colonial times, there have been numerous revisions to the laws governing adolescent sexuality. The 2013 revision raised the age of consent from 10 to 12, then from 14 to 16 to finally 18 years old in order to bring it into compliance with the Act, which had just been passed at the time. The legislation desexualizes young women by ignoring the potential that they may engage in sexual conduct voluntarily. As previously stated, it is predicated on the notion that any person below the age of 18 lacks mental maturity which is required by law.
3. **Ignores Social Reality:** The law makes all the adolescent sexuality a crime and therefore, either it ignores or attempts to disregard social realities. According to some surveys, there are approximately 39% of females encounter their first sexual act before they attain the age of 18.
4. **Burdens Overburdened Courts:** According to the NCRB report, “Crime in India 2021, the number of juveniles (especially those between the ages of 16 and 18) apprehended under the POCSO Act in the country has seen a staggering jump of 180% between 2017- 2021, according to the National Crime Records Bureau’s report, ‘Crime in India 2021’.

Criminalising underage sexuality (25% of total POCSO cases) burdens the already-overburdened courts thereby clogging up the criminal justice machinery even more.”

5. Impairs the Privacy of the Victim: Legislators should pay attention to the collective victimisation of the "consenting" girl. The Child Marriage Act, POCSO, and MTP (Medical Termination of Pregnancy) Act combine to form a complicated socio-legal web that denies minor girls their rights to privacy, the dignity of sexual and reproductive life. As a result of the established societal stigma, she is unable to use the available government assistance because it restricts her rights and makes her aware.

All these factors provide for general reasons for not considering the change in the “age of consent”. Another reason, that plays one of the major roles in it is the “society”. The world we live in has provided us with the ability to live by following a few provided rules, which are the moral high grounds that people must accept in order to live as members of society.

THE VIEWS OF JUDICIARY ON RESTRUCTURING THE AGE OF CONSENT

The view of judiciary is based on the question of “age of consent” for the minors, as there are many aspects to keep in check. “The Madras, Delhi, and Meghalaya High Courts' opinions, which have accumulated as a result of being flagged with the issues concerning the criminalization of romantic relationships between or with an adolescent under POCSO, are what led the Chief Justice of India to address concerns about the age of consent under the POCSO Act by a message to Parliament.”

In *AK v. State Govt of NCT of Delhi*, the Delhi High Court, stated that “the intention of POCSO was to protect children below the age of 18 years from sexual exploitation and not to criminalise romantic relationships between consenting young adults.”

In another recent case, the Madras High Court said that “it was ‘eagerly’ waiting for the legislature to reduce the age of consent under the POCSO Act from the current 18 years, as it upheld the conviction of a man sentenced to seven years imprisonment for having kidnapped and repeatedly raped a 17-year-old girl.”

The Madras High Court questioned whether it was wise to make such acts crimes in the case of *Vijayalakshmi V. State Rep., Inspector of Police*. The same high court recommended that the age of consent be increased to 16 years in the case of *Sabari V. Inspector of Police* as well.

Other High Courts that share the Madras HC's viewpoint are those in Assam, Bombay, and Karnataka.

REPORTS ON “AGE OF CONSENT”

A few surveys have been conducted by the NGOs and the government authorities for provide statistics that the laws which were embarked to protect and preserve the innocence of the child are being misused against them only.

The report of Enfold Proactive Health Trust, a Bengaluru-based NGO, assessed such "romantic cases" registered under the POCSO Act in West Bengal, Assam, and Maharashtra between the years 2016 and 2020. Enfold Proactive Health Trust collaborated with UNICEF India and UNFPA (United Nations Population Fund) on the study.

A different study found that between 2016 and 2020, "romantic cases" accounted for 24.3% of all POCSO cases, and 80.2% of these cases were submitted by the girl's parents or other close family members.

The year of 2018 saw the completion of yet another study by the National Law School of India University's Centre for the Child and the Law (CCL-NLSIU) revealed that “romantic cases constituted 21.2% of cases in Andhra Pradesh, 15.6% in Assam, 21.5% in Delhi, 21.8% in three districts of Karnataka, and 20.5% in Maharashtra.”

The Special Courts established for cases under the POCSO Act, as well as in the *S. Varadarajan case*, make no mention of the girls being "induced" or "coerced" into having sexual intercourse in their rulings. The ladies were on the edge of becoming adults, and their educational background, along with the environment in Mumbai and throughout the states, suggests that they knew what they were doing. It can be blamed on the technological advancement of the children at a very young age that make them aware of all the things.

Therefore, from the above decisions of the judiciary and the studies of shows that the we can treat a person as a child when he or she is below the age of 18 but we can restrict them from a romantic relationship between, when they are aware of nature of the relationship as well as the consequences. It is not to be assumed that all relationships of the minors are romantic or consensual, but it will depend on the situations of each of the case, but we cannot let every relationship between people below the age of 18 years as an offence.

It is the responsibility of society, family, and educational institutions to teach children the difference between good and bad touch so that they are aware of all potentially harmful acts. But it is also the duty of society to accept the relationships of the people under the said age of minority, as everyone has a right to a respectable life in society.

According to “the Justice Verma Committee Report on the interpretation of Article 34 of the UNCRC, the POCSO Act's age of consent should be lowered to sixteen in order to benefit society.” This is because the POCSO Act will be more beneficial to society if the age of majority is lowered from 18 to 16 years old, depending on the mental maturity of the individuals, as it stated that *“it was aimed inter alia to protect children from sexual assault and abuse and not to criminalize consensual sex between two individuals even if they are below eighteen years of age.”* In the world's society as a whole, there are several nations like Japan where the legal consent age is set at 13, as opposed to Italy, Hungary, Germany, Austria, and Portugal where the legal consent age is set at 14. The most significant connection between these nations and India is that both respect teenagers and do not treat them like children, recognizing that they are capable of making their own decisions. But in India, it is the tendency of the majority of nation to underestimate the decision-making process of teenagers and their subsequent refusal to communicate with the children about “subjects inappropriate for their age” which outcomes in cases where the youngsters fall as the victim either to an unjust law or to unspeakable evil.

What should be emphasized is that the legal age at which a person is considered capable of making decisions is not the same as the actual age at which an adolescent becomes capable of making decisions for themselves. There has been a drift between the two causes, as we cannot be assured that a person will be mentally and psychologically mature and more aware of their actions, after the age of 18, therefore, the friction between these two, sometimes end up in gross injustice for the young adults. It is wrong to accuse them of a crime for what they did, especially if they were having a consensual relationship with another teenager.

As a result, it is becoming more and more necessary to re-evaluate the POCSO Act's age restriction, especially in situations where there are intimate relationships between minors. The minors won't have to go through the agony of being accused of sexual offences for their otherwise consensual acts, and this will help to ensure that they are not criminalized for their adolescent behaviours.

REFERENCES

1. AIR 2017 SC 3457.
2. Maharukh Adenwalla and Prakriti Shah “Age of Consent” Under the POCSO Act, *available at: <https://www.scconline.com/blog/post/2023/03/12/age-of-consent-under-the-pocso-act/>*
3. 2022 Live Law (Del) 1077.
4. Ramakrishnan & Raha, “Romantic” Cases under the POCSO Act Enfold Proactive Health Trust: 2022.
5. S. Varadarajan v. State of Madras, (1965) 1 SCR 243.
6. “International Institute of Population Sciences, National Family Health Survey 4, India.pdf. 2015” available at: [.https://www.scconline.com/blog/post/2023/03/12/age-of-consent-under-the-pocso-act/](https://www.scconline.com/blog/post/2023/03/12/age-of-consent-under-the-pocso-act/)

