

Considering Consent:

On POCSO Act and the age of consent

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Paper - II
(Indian Polity)

❖ The law must stay in tune with the times and consider ground realities

As much as the laws of a country must adhere to the principle of justice and fairness, they also need to stay in tune with the times. It was this proviso that the Dharwad Bench of the High Court of Karnataka invoked as it urged the Law Commission of India to have a rethink on the criteria for age of consent, 'taking into consideration the ground realities'. The judges said they were motivated to make this recommendation, having encountered several cases relating to minor girls over the age of 16 years (but below 18 years) having fallen in love and eloped with the boy, and wondered why the consent of the girl in a sexual relationship is not factored in, especially when charges are made out under provisions of the POCSO Act.

POCSO Act and Related Matters

The Act was enacted to protect children from sexual abuse, and it raised the age of consent for sexual intercourse from 16 to 18 years. In practice, however, studies have noted that many cases booked under the Act in the adolescent group (16 years and above) have a romantic involvement, including eloping with the intention of getting married, consensually.

Law Commission

- The Law Commission of India is neither a constitutional body nor a statutory body. It is an executive body constituted by order of the Government of India. Its main function is to work for legal reforms.
- The commission is constituted for a fixed term and acts as an advisory body to the Ministry of Law and Justice. Its members are mainly legal experts.
- The first commission in India was constituted in the year 1834 under the chairmanship of Lord Macaulay under the Charter Act of 1833 which recommended codification of the Criminal Code and the Code of Criminal Procedure.
- There was a demand to set up a Central Law Commission inside and outside the Parliament to recommend reforms and updating the inherited laws to serve the changing needs of the country.
- The Government of India appointed the first Law Commission of independent India in the year 1955 under the then Attorney General of India, M.C. Setalvad was constituted under the chairmanship.
- So far, a total of 21 Law Commissions with three-year tenure have been constituted, out of which the term of the 21st Law Commission ended on August 31, 2018, while the 22nd Law Commission has been constituted under the chairmanship of Rituraj Awasthi.

In almost all instances, police cases are initiated by the parents of the minor girl who has eloped with the lover. Once the sexual act is confirmed, the POCSO Act is slapped on the boy, who may sometimes be a minor, or barely of legal age for marriage, and the consequences of being prosecuted for penetrative sexual assault are life altering, as they are meant to be. While the boys face criminal prosecution, the girls are also sent to government institutions when they protest parents' strong disapproval of the liaison.

Effects and Remedies of POCSO Act

Activists have charged that this has the potential to wreck the lives of the youngsters involved, and entire families too are felled by this encounter with the law. However, the realities of adolescent attraction and the ascertainment of consent, 16 years or above, must be considered pertinent to investigation and prosecution. The High Court judges also asked if it could be presumed that minors have knowledge of the applicable law. It may be remembered that the Justice J.S. Verma Committee on Amendments to Criminal Law also recommended that the age of consent be reduced to 16, and necessary amendments be made in the POCSO Act.

Now What Next

The Law Commission must now train its guns on the actual implementation of the Act, and ensure the POCSO Act, stays true to its broad intent — the protection of children. There is no doubt that children are vulnerable, and must be protected from forced attempts to sexually assault or groom them with an eye on exploitation.

What is POCSO Act

- The POCSO Act, 2012 was enacted to protect children from sexual offenses, sexual harassment and pornography keeping in mind the interest and safety of children. It is an abbreviation for Protection of Children from Sexual Offenses Act (POCSO). The Act defines a 'child' as a person below the age of 18 years and shall ensure the physical, emotional, intellectual and social development of the child, with utmost importance at every stage in the best interests and welfare of the child. respects. There is no gender discrimination in this act.
- Penetrative Sexual Assault, Sexual Assault and Sexual Harassment were defined for the first time through the Child Sexual Offenses Protection Act. In the year 2019, through the Protection of Children from Sexual offenses (Amendment) Bill, 2019, a provision of capital punishment was made in the case of 'aggravated penetrative sexual assault'.

Child age group prescribed in India under various Acts:

- Companies Act, 1948: Below 15 years of age
- Child Labor (Prohibition and Regulation) Act 1986: Below 14 years of age
- POCSO Act 2012 : Below 18 years of age
- Juvenile Justice (Care and Protection of Children) Act, 2015: Below 14 years of age

Child age prescribed in global law:

- In many countries of the world, the age group of 16 years or less is kept in the category of child.
- America, Europe, Japan, Canada, Australia, China and Russia are also included in this category.

Expected Question

Que. With reference to the Protection of Children from Sexual Offenses Act (POCSO) 2012, consider the following statements.

1. The age of children has been fixed up to 18 years in the Act.
2. The Act is not gender neutral and pertains to girls only.

Which of the above statement(s) is/are true?

- (a) only 1 (b) only 2
(c) Both 1 and 2 (d) None of the above

Answer : A

Mains Expected Question & Format

Que.: State the main provisions of the Protection of Children from Sexual Offenses (POCSO) Act and why the Karnataka High Court suggested to reduce the age of children under this Act and what will be its effect?

Answer Format :

❖ **Introduction (40-50 words)**

State the major provisions of POCSO Act.

❖ **Main Body (140-160 words)**

State the suggestion of the High Court on the POCSO Act and its impact on the Act.

❖ **Conclusion (30-40 words)**

Give your views on how appropriate to reduce the age under POCSO Act.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.