

Protecting or Penalising?

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Protecting or Penalising? Supreme Court's Reflection on POCSO

Context:

The **Supreme Court of India** recently delivered a significant judgment relating to **adolescent privacy and justice** under the **Protection of Children from Sexual Offences (POCSO) Act, 2012**. It refused to impose a sentence on a man convicted of aggravated penetrative sexual assault, considering the **victim's emotional, social, and economic circumstances**. The verdict reignited the debate on the **intersection of adolescent relationships and rigid child protection laws**.

Introduction:

The **POCSO Act, 2012** was enacted to ensure the **protection of children under 18** from **sexual offences and exploitation**. However, it **criminalises all sexual activity involving minors**, including **consensual acts between adolescents**, without acknowledging their **agency or intent**. The recent case before the Supreme Court brought attention to the **legal, social, and psychological consequences** of such a framework in real-life adolescent relationships.

About the POCSO Act

- The Act defines a **child** as any person **below 18 years of age**.
- It makes all sexual acts with minors **criminal**, regardless of consent.
- **Section 6** of the Act deals with **aggravated penetrative sexual assault**, prescribing a **minimum punishment of 20 years**, extendable to **life imprisonment or death**.
- The law **does not differentiate** between **exploitative** and **non-exploitative** consensual acts involving adolescents.
- The **World Health Organization** defines adolescence as the age group **10 to 19 years**.

- The Act treats **adolescents aged 16 to 18 years** the same as younger children, with **no exception for consensual relationships**.

Details of the Case

- A **14-year-old girl from rural West Bengal** left home to live with a **25-year-old man**.
- They later **married and had a child** when she was 17.
- The man was arrested and convicted of **kidnapping, rape, child marriage**, and **aggravated penetrative sexual assault** under POCSO.
- A **POCSO Special Court** sentenced him to **20 years' imprisonment**.
- The **High Court**, observing the **couple's socio-economic background**, reversed the conviction to ensure **complete justice**.
- However, controversial remarks made during the hearing led to **public outrage**, prompting the **Supreme Court to take suo motu cognisance**.

Supreme Court Proceedings and Final Verdict

- The Court initially restored the **conviction** and rejected terms like **"non-exploitative sexual acts"** and the idea of **"older adolescents"**.
- It directed the formation of a **committee** including a **clinical psychologist, social scientist, and child welfare officer** to assess the **victim's wishes**.
- The committee report and court interaction revealed the **emotional and financial toll** of prolonged legal proceedings on the victim and family.
- The Court observed a **"collective failure of systems"**, with the girl left unsupported by **state, family, or community**.
- Exercising its powers under **Article 142 of the Constitution**, the Court chose **not to impose a sentence** on the accused, stating that **sending him to jail would harm the victim further**.
- **Article 142** allows the Supreme Court to pass any order necessary to do **complete justice** in any matter before it.

Key Challenges Highlighted

- The Act's **strict structure** overlooks **real-life adolescent relationships**, especially **consensual acts** among those aged **16 to 18 years**.
- **International human rights law**, including **General Comment No. 20** of the **UN Committee on the Rights of the Child**, advises states to **avoid criminalising consensual, non-exploitative acts among adolescents**.
- **India ratified the UN Convention on the Rights of the Child (UNCRC)** in **1992**, which supports this principle.
- Both **High Court and Supreme Court** barred their rulings from being treated as **precedent**, reflecting the judiciary's discomfort in institutionalising such exceptions.
- Empirical data suggests such cases are **common**, not exceptional.
- A study of **7,064 POCSO judgments** in three states between 2016 and 2020 showed that **24.3% involved romantic relationships**, and **82% of victims** refused to testify against the accused.
- Another analysis of **264 cases under Section 6** revealed **25.4% involved consensual relationships**.
- **Scientific studies** affirm that **sexual exploration is a normal aspect** of adolescent development.
- The case shows that in some instances, **the legal process itself becomes traumatic**, rather than the act being prosecuted.
- The Court acknowledged a **"total failure of legal, family, and social systems"**, highlighting the **structural flaws** in adolescent protection mechanisms.

Conclusion:

The case underscores the urgent need for **structural reforms in the POCSO framework**, especially in recognising the **reality of consensual adolescent relationships**. Legal provisions must be aligned with **psychological development, global human rights standards, and India's international obligations**. The focus should shift towards a **supportive, rights-based approach** that protects children while respecting their **agency and dignity**. Reforms must ensure that justice is **not only legal but humane**, and that laws meant to **protect do not end up punishing the vulnerable**.