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The Unintended Victims: How POCSO Affects Adolescents' Autonomy And Access To Health

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In the last six months almost every High Court has faced the question of criminalization of romantic relationships under the Protection of Children from Sexual Offences Act, 2012 (here in after POCSO). Different high courts have

adopted different measures while dealing with such cases, but what remains common is the recognition of need for reforms under the POCSO, to ensure no step-motherly behavior is faced by the adolescents.

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Recently the Delhi High Court (<https://livelaw-nluo.refread.com/high-court/delhi-high-court/delhi-high-court-pocso-act-teen-relationship-offence-270893>) has observed that teenage love falls under a “legal grey area” and it is debatable if it can actually be categorized as an offence. Similarly, Uttarakhand High Court (<https://livelaw-nluo.refread.com/high-court/allahabad-high-court/uttarakhand-high-court-counselling-arresting-adolescent-boys-dating-minor-girls-pocso-act-uo-i-state-govt-262389>) and Kerala High Court have called the states to consider counselling instead of directly arresting adolescent boys involved in consensual relationship with minor girls. The Allahabad High Court (<https://livelaw-nluo.refread.com/high-court/allahabad-high-court/allahabad-high-court-concern-misuse-pocso-act-teenagers-consensual-romantic-relations-262370>) has even raised its concern over the misuse of the POCSO provisions by the parents of the minor girls, in case of their disapproval of the relationship between the couple. Despite these concerns raised by the High Courts, the Supreme Court in the case of *In re: Right to privacy of Adolescents, 2024* (<https://www.livelaw.in/amp/top-stories/how-can-pocso-act-offence-be-termed-romantic-supreme-court-slams-hc-suggestion-to-decriminalise-consensual-sex-among-teens-267190>), has held that cases under POCSO can never be consensual or romantic as a minor's consent is no consent at all. This raises significant concerns over the right of adolescent autonomy and hence demands a relook into the actual purpose of POCSO.

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Child abuse has remained a persistent issue through history, manifesting in various forms, with sexual abuse standing out as one of the most egregious. Acts such as rape, sexual assault, harassment, and trafficking are major violations of human rights. Consequently, the Parliament enacted the Protection of Children

from Sexual Offences Act, 2012 (POCSO), with the primary aim of safeguarding children from such crimes and fostering their healthy physical, emotional, intellectual, and social development in a gender-neutral framework.

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However, 12 years' later, what we witness today, is, children are maturing at earlier ages, both physically and emotionally, compared to previous generations. Many are now making informed decisions about their lives, including their sexual relationships. According to the National Family Health Survey (2019-21) (<https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>), 10% of women aged 25-49 had their first sexual experience before the age of 15, and 39% before the age of 18. Notably, none of these women reported their experiences as coerced or non-consensual. Similarly, a study (<https://haqcrc.org/wp-content/uploads/2019/04/pocso-national-consultation-report-april-2019.pdf>) on the functioning of Special Courts under POCSO in Maharashtra found that parents filed 80.2% of complaints after their children had eloped with a partner. These numbers show that many POCSO cases are not initiated due to sexual exploitation but are instead a result of familial disapproval of consensual relationships (<https://livelaw-nluo.refread.com/high-court/delhi-high-court/delhi-high-court-pocso-act-misuse-266697?fromIpLogin=14583.322458078452>). Such differences can stem from various factors, including differences in social standing, caste or religion between the couple.

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While some High Courts have begun to quash such cases involving consensual acts, the larger question is: How many of these cases actually make it to the High Courts, and how long does it take for this to happen? After enduring years of suffering, social ostracism, and the complete erosion of their confidence, the child is expected to reintegrate into society—a society that now labels them a rapist. But

how realistic is such reintegration? How many children are truly able to recover and rebuild their lives after such an ordeal? Even if acquitted, can the trauma they've endured be erased? These questions remain largely unanswered.

It is also crucial to note that the impact of such criminalization is not limited to the accused. It affects the victim just as profoundly. The victim often faces social stigma, academic difficulties, and the emotional toll of navigating through the legal process. While the sole testimony of the victim is considered sufficient for the conviction of the accused (<https://livelaw-nluo.refread.com/high-court/meghalaya-high-court/meghalaya-high-court-rape-conviction-victim-sole-testimony-reliable-263185?fromIpLogin=98393.6253702353>), but not for his acquittal. No matter how many times the victim states the act to be consensual and her willingness to live with the accused, the court completely disregards her testimony, leading to the conviction of the accused. The psychological trauma of having their consent and personal agency completely disregarded both during the lodging of the First Information Report and at the trial leaves deep, indelible scars on their emotional health and erodes their faith in the legal system.

Additionally while POCSO Act is gender-neutral, the application is gendered. More often than not, the adolescent girl is sent to the Child Welfare Committee while the boy is sent to the Juvenile Justice Board and hence facing trial.

It would be wrong to limit the scope of consequences of criminalization under POCSO to only legal and social consequences. Such criminalization also jeopardizes access to healthcare for adolescents, leading to unsafe abortions and sometimes even neonatal and maternal mortality. Teenage pregnancy has been an issue in our country caused by prevalence of child marriages and hence to create awareness amongst teenagers and to provide them safe access to healthcare the Adolescent Reproductive and Sexual Health (ARSH) policy (<https://jknhm.jk.gov.in/ARSH%20Guidelines.pdf>) was launched by the government in 2005 under the guidelines of the World Health Organisation. This policy aimed to provide preventive, promotive and curative counseling services to both married and unmarried adolescents and educate them about the prevalence of HIV/AIDS, Sexually Transmitted Diseases (STDs), and the negative impacts of

early pregnancy. The most important feature of ARSH is that it ensures that the service providers are trained in handling the cases of adolescents without any prejudice, providing a platform for the adolescents to open up freely and without any fear of judgment. However, with the enactment of POCSO in 2012 and its mandatory reporting of sexual offenses, the doors of ARSH for adolescents is closed. Now adolescents not only are hesitant to avail the benefits of health facilities but also prefer to adopt unsafe abortions through self-medication or dangerous abortion techniques learnt online. Therefore, the ARSH's impact and access is being diminished putting adolescents at even greater risk of mortality and infertility.

So what can be done to prevent the devastating consequences of such criminalization. Many academics and scholars preach to reduce the age of consent back to 16 years. However, it cannot be an apt solution because it would enable the predators to get away from culpability in the guise of consent by the victim, leading to abuse of the minor young girls by the older men or vice versa. This was also highlighted in the 283rd Law Commission report.

(<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2024/01/20240101114444.pdf>)

One of the alternate solutions lies within the POCSO Act itself. The Act provides for establishment of special courts for a child-friendly trial procedure. Giving the judges of these special courts controlled discretionary powers under the POCSO Act itself would not only make the legal process short but also ensure that the trial remains child-friendly and the best interest of the child remains paramount. The quashing of the case which is done by the High Courts under their inherent powers after years of struggle, could be done by the trial courts at the initial level of trial if it can be inferred to be consensual. However, it cannot be the golden rule, applicable to every set of facts. The factors like the age of the accused and victim, the age gap between them, their understanding of the act, their present social standing, whether they want to live together or not, should also be taken into account, before quashing the case. Such controlled discretion would ensure that the predators cannot escape liability and the adolescents are not burned in the wrath of the legal process.

Another solution could be to adopt preventive measure i.e. integrating sex-education and legal education into the school's curriculum, particularly for students in classes 11th and 12th, when they are between the ages of 16 and 18 and more susceptible to such relationships. The Supreme Court (<https://livelaw-nluo.refread.com/top-stories/imparting-sex-education-awareness-about-pocso-act-obligation-of-governments-supreme-court-270453?fromIpLogin=99727.86911291668>) has also recently mandated governments to impart sex-ed & awareness about the POCSO. By educating adolescents about their rights, the law, and the boundaries of consent, we can help prevent situations that might lead to unintended legal complications.

In conclusion, while the intent behind the POCSO Act is to protect children from sexual exploitation and abuse, its current application, especially in cases involving consensual sexual acts between adolescents, fails to account for the complexities of adolescent relationships. This oversight creates significant legal, social, and health challenges for young people, including barriers to essential healthcare services and the risk of psychological trauma. By granting Special Courts more discretionary powers, integrating sex-ed and legal education into the school curriculum, and adopting a more nuanced approach to adolescent relationships, the law can better serve its purpose of protecting children while empowering them to make informed decisions about their lives and their health. Only then can we claim that POCSO Act is truly upholding the best interests of children and adolescents.

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