

# CHILDHOOD, CONSENT, AND PRIVACY: A CASE COMMENT ON IN RE: RIGHT TO PRIVACY OF ADOLESCENTS

*Hritwik Ravi*<sup>1</sup>

## **Abstract**

*The Supreme Court's judgment on in Re: Right to Privacy of Adolescents marks a critical juncture in the intersection of child protection law, constitutional justice, and adolescent autonomy in India. While the Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted as a robust safeguard against sexual abuse, its blanket criminalization of all sexual activity under eighteen has created deep tensions between legislative intent and lived adolescent realities. A significant proportion of POCSO cases, often "romantic" in nature, reflect consensual relationships between peers rather than predatory exploitation, exposing the limits of a rigid statutory framework. The case in question illustrates the tragic consequences of this dissonance, where the victim's trauma stemmed less from the alleged offence and more from systemic failures: police hostility, legal alienation, financial exploitation, and institutional neglect. The Court's invocation of Article 142 to suspend sentencing, despite affirming the conviction, embodies a bold embrace of restorative justice. This act was framed not as mercy but as a therapeutic intervention to prevent further harm to the victim and her child, highlighting the judiciary's role as a constitutional corrective when statutory schemes collapse into instruments of harm. Yet, the Court's disclaimer that the decision should not be treated as precedent underscores the fragility of such interventions, which cannot substitute for structural reform. The judgment ultimately exposes the pressing need to reconcile POCSO with adolescent realities, calling for legislative recalibration, comprehensive sexuality education, and stronger welfare mechanisms. While the Court has delivered "complete justice" in one tragic case, the responsibility now shifts to Parliament to ensure a systemic response that balances protection with recognition of adolescent agency.*

**Keywords:** POCSO Act, adolescent autonomy, restorative justice, constitutional interpretation, consent.

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<sup>1</sup>Research Scholar at Indian Law Institute, New Delhi

## Introduction

The Protection of Children from Sexual Offences (POCSO) Act, 2012, stands as a pillar of India's child protection jurisprudence. It's a legislative shield forged with the noble and necessary intent of safeguarding the nation's most vulnerable from the scourge of sexual abuse. It defines a "child" as any person below the age of eighteen, thereby creating a legal reality where a minor's consent to a sexual act is a nullity. The doctrine of *parens patriae*, the state as the ultimate guardian, finds its most potent expression in this act.

This blanket criminalization policy, a fundamental tool in combating exploitative predation, has unintentionally drawn the Indian legal system into a social clash. Law, in its unyielding rigidity, has been pitted against the intricate, frequently untidy, realities of teenage sexuality. Empirical research has always found that a considerable percentage of cases registered under POCSO, which is projected at 20% to 25%, are not predatory abuse but are "romantic" cases involving consensual relationships between adolescents who are close in age. In such cases, the gender-neutral language of the law is routinely interpreted in a gendered fashion; when two children are discovered to be in a relationship that violates the provisions of the Act, the judiciary traditionally automatically labels the girl the "victim" and the boy as the "accused" and sends him into the juvenile justice system. On the other hand, the girl is sent to a Child Welfare Committee.

Thus, over the past decade, a significant and contentious debate has emerged from the law's application to cases that are far removed from its intended targets. This has led to a state of legal and social turmoil, in which young people find their evolving agency denied and their emotional lives prosecuted.

This legal quagmire has fostered a fractured jurisprudence across the country in which Courts are adopting starkly divergent approaches.

*In Re: Right to Privacy of Adolescents* is a decision that does not resolve the statutory paradox but instead transcends it and brings the entire dilemma into sharp focus. It states that true justice, at times, must look beyond the cold letter of the law to the reality of human lives.

## Deconstructing the Case

The case originated from a relationship between a 14-year-old girl and a 25-year-old man in rural West Bengal. In May 2018, the girl left her home to be with the man, prompting her mother to file a First Information Report (FIR). The girl was subsequently placed in a shelter home and later restored to her parents. However, facing intense stigma, humiliation, and surveillance from her own family, she left again to live with the accused. In May 2021, when she was 17, she gave birth to their daughter.

The state machinery arrested the accused in December 2021. The Special Court convicted him under Section 6 of the Act and Sections 363 and 366 of the Indian Penal Code, 1860 (IPC), imposing the mandatory minimum sentence of twenty years' rigorous imprisonment for the POCSO offence.

On appeal, the Calcutta High Court, in a surprising move, set aside the conviction entirely. Invoking its extraordinary powers under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure, 1973 (CrPC), the High Court prioritized the preservation of the *de facto* family unit over the strict application of the law.

The State of West Bengal appealed this acquittal to the Supreme Court. In an initial judgment on August 20, 2024, the Supreme Court set aside the High Court's order, restoring the conviction. The Court, however, deferred the question of sentencing and appointed a three-member expert committee to assess the socio-psychological realities of the case.

## Analysis of the Judgment

Written by Justice Abhay S. Oka, the Court first dismantled the High Court's reasoning for quashing the conviction. It held that the High Court had committed a grave jurisdictional error by using its inherent powers under Section 482 CrPC to nullify a conviction for a serious, non-compoundable offence. Relying on its own precedent in *Gian Singh v. State of Punjab & Anr.*,<sup>2</sup> the Court reiterated the principle that while offences of a "civil flavor" could be quashed upon settlement, this power does not extend to "serious offences like murder, rape, dacoity, etc., or other offences of moral turpitude under special statutes".

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<sup>2</sup>2012 (10) SCC 303

The Court unequivocally placed POCSO offences in this latter category, reasoning that they are crimes against society, not merely against an individual. Therefore, a subsequent compromise or marriage holds no legal sanctity in erasing the crime. The Court stated firmly that “even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution”. This part of the judgment serves as a crucial reaffirmation of the POCSO Act’s legislative intent.

Having reinstated the conviction, the Court then addressed the very disturbing issue of sentencing, under the direction of the appalling revelations of the expert committee. The committee’s deepest finding, which was the ethical pivot of the Court’s ruling, was that “it was not the legal crime which caused trauma on the victim, rather it was the legal battle which ensued consequent to the crime that is taking a toll on the victim”. Her trauma was the result of her experiences with the police, the isolating legal system, and the desperate, money-losing fight to save her partner and bring up their child on her own. The committee documented her appalling financial exploitation, to the extent that she was made to take on a debt of over Rs. 2 lakhs for lawyers’ fees and even a tout.

The reports painted a picture of a young woman who, abandoned by her family and failed by the State, had found her only anchor in the very man the law branded her abuser.

Section 19(6) of the POCSO Act, a crucial provision that mandates informing the local Child Welfare Committee (CWC), which would have triggered the supportive framework of the Juvenile Justice (Care and Protection of Children) Act, 2015. This, combined with the inaction of village-level Child Protection Committees and the failure of the legal aid system, created a vacuum of support that left the victim with no viable alternative. The Court concluded that a mechanical application of the mandatory twenty-year sentence under Section 6 of the POCSO Act would be the ultimate act of systemic violence against the victim, destroying her family and her emotional well-being.

### **Article 142 as a Tool of Restorative Justice**

To resolve this conflict, the Court invoked its extraordinary jurisdiction under Article 142 of the Constitution, which empowers it to pass any order

necessary for “doing complete justice”. The Court clarified that this was not an act of mercy but a calculated therapeutic intervention, stating that “true justice lies in not sentencing the accused to undergo imprisonment”. Aware of the profound implications, the Court emphatically ring-fenced its decision, stating, “This case is not going to be a precedent... This case is an illustration of the complete failure of our society and our legal system”.

### **Reconciling POCSO with Adolescent Realities**

The judgment reflects a bold and empathetic turn towards restorative justice. However, its dependence on a constitutional exception to address a systemic statutory void exposes a deeper malaise within Indian criminal law. It mirrors a broader conflict unfolding in High Courts across the country, resulting in a fractured and inconsistent jurisprudence. Several courts have adopted a pragmatic approach, recognizing the need to contextualize adolescent intimacy rather than criminalize it mechanically.

For instance, in *Hamid Sha v. State of Odisha*,<sup>3</sup> the Orissa High Court granted interim bail, with Justice S.K. Panigrahi observing that the justice system should not be weaponized to punish emotional intimacy between peers simply because it offends the sensibilities of others.” The court further emphasized the need for a “nuanced and contextual approach” rather than rigid statutory application. (The Indian Express, 2024) In another set of cases, the same court quashed proceedings where couples had married, reasoning that continuation of prosecution would have the “undesired and self-defeating effect of punishing the victim as well.”

This reasoning has found resonance elsewhere. The Karnataka High Courts, too, have invoked similar considerations in “Romeo and Juliet” cases, prioritizing familial stability and protection from societal stigma (The Hindu, 2024).

Yet, these reformist decisions coexist uneasily with more formalist rulings. In a separate matter, the Madras High Court stressed that a POCSO offence is not merely against an individual but against society itself, holding that marriage cannot erase culpability. This divergence creates acute legal uncertainty, where outcomes hinge less on principle than on the bench before which a case is placed.

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<sup>3</sup>BLAPL No.1805 of 2025 (High Court of Orissa)

## Conclusion

The Supreme Court's judgment in *In Re: Right to Privacy of Adolescents* is a profound statement on the limits of law and the boundlessness of justice. It is a testament to the fact that when a legal system fails so completely that its own processes become the primary source of trauma, the Constitution must serve as the ultimate corrective. The Court did not condone the act but condemned the system that left a vulnerable girl with no real choice. While the Court's disclaimer that this case is not a precedent must be respected, its true legacy lies in its role as a powerful catalyst. It has laid bare the deep-seated flaws in the POCSO Act's application to adolescent relationships and has placed the onus squarely on the legislature to act. The judgment's forward-looking directions, which call for comprehensive sexuality education, robust data collection, and the strengthening of child welfare systems, chart a course for a more holistic, supportive, and humane approach to child protection. The Court has done its part to deliver "complete justice" in one tragic case; it is now for Parliament to ensure that such extraordinary judicial interventions are no longer necessary.

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