



Age of Consent for Adolescents

For Prelims: Protection of Children from Sexual Offences Act, 2012, Indian Penal Code.

For mains: Age of Consent for Adolescents under POCSO Act and related concerns.

Why in News?

The [Chief Justice of India's](#) message to Parliament to address concerns about the age of consent under the [POCSO Act \(Protection of Children from Sexual Offences Act\)](#) is the culmination of a series of events. The Madras, Delhi and Meghalaya High Courts have flagged matters concerning criminalisation of romantic relationships between or with an adolescent under POCSO.

- In November 2022, the Delhi [High Court in AK v. State Govt of NCT of Delhi](#) (order by Justice Jasmeet Singh) 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.
- However, in December 2022, the government told Parliament that it does not have any plan to revise the age of consent.

What is the POCSO Act, 2012?

- **About:**
 - It defines a child as any person **below eighteen years of age and regards the best interests** and welfare of the child as a matter of paramount importance at every stage, to ensure the **healthy physical, emotional, intellectual and social development** of the child.
 - It defines different forms of sexual abuse, **including penetrative and non-penetrative assault**, as well as sexual harassment and pornography.
 - It deems a sexual assault to be **"aggravated"** under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority like a family member, police officer, teacher, or doctor.
 - It also casts the police in the role of child protectors during the investigative process.
 - The Act stipulates that a case of child sexual abuse **must be disposed of within one year** from the date the offence is reported.
 - It was [amended in August 2019](#) to provide more stringent punishment, including the death penalty, for sexual crimes against children.
- **Age of Consent:**
 - The POCSO Act criminalizes all sexual acts among those under 18 regardless of **whether consent is present factually among the minors** because the presumption of the law is that there is no consent in the legal sense among those below 18.

What are the Issues with Age of Consent under the Act?

- **Instrument to Silence or Regulate a Consensual Sexual Relationship:** The root cause of the

problem at hand is that POCSO conflates exploitative sexual practice and general sexual expression by an adolescent and criminalises both.

- As a result, criminal law has become an instrument to silence or regulate a non-exploitative consensual sexual relationship involving a minor girl, which is voluntary.
- **Desexualises Minor Girl:** The legal aspects of teenage sexuality have undergone several changes since colonial times. The age of consent has increased from 10 to 12 to 14 to 16 and finally to 18 years by the 2013 amendment, in order to bring it in conformity with the then newly legislated POCSO Act.
 - The law disregards the likelihood of a minor girl engaging in sexual activity voluntarily — it thus desexualises her.
- **Ignores Social Reality:** The law that criminalises adolescent sexuality either ignores social reality or pretends to do so. According to the [NFHS-5](#), for instance, 39% women had their first sexual experience before turning 18.
 - The same survey provides additional evidence of sexual engagement among unmarried adolescent girls by reporting contraception use by 45% of unmarried girls in the age group of 15-19 years.
- **Government Acting as Parens Patriae:** The recent criminal law amendment in state of Uttar Pradesh (under this, the accused in cases of rape and POCSO will not get anticipatory bail) rubs salt on the already wounded.
 - The state seems to be acting as **parens patriae** to protect children from sexual offences and paradoxically prosecuting the youth at the same time.
- **Burdens Already Overburdened Courts:** 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.
- **Undermines the Victim's Privacy:** The cumulative victimisation of the "consenting" girl also deserves the lawmakers' attention. POCSO, [MTP \(Medical Termination of Pregnancy\) Act](#) and the [Child Marriage Act](#) create a complex socio-legal web that deprives the minor girl of the rights to dignity, liberty, sexual and reproductive health, and undermines her privacy. This also feeds into a milieu of poor sexual awareness among young girls.

What are Judicial Interventions in this Case?

- **Demarcating the Nature of Acts:** What has been set wrong by the legislature has been attempted to be remedied by the judiciary. The **Madras High Court in Vijayalakshmi v State (2021)** made it imperative to draw a line demarcating the nature of acts that should not be made to fall within the scope of this stringent law.
 - The obiter of the court that POCSO has become a tool in the hands of certain sections of society to abuse the process of law is corroborated by other courts too.
 - Prima facie the judiciary seems to have a sympathetic approach in cases — it has readily granted bail where the outcome of the love affair is marriage.
- In **Dharmendra Singh v State Govt of NCT (2020)**, the Delhi High Court has attempted to increase the chances of bail of an accused in an "innocent yet unholy physical alliance" or where there is "tacit approval-in-fact" by the girl and the "age difference between the victim and the offender is less".
- Recently, Karnataka High Court, while dismissing a case filed under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), said the Law Commission of India will have to rethink the age of consent for Adolescents.
 - The court said, the aspect of consent by a girl of 16 years, but who is below 18 years, would have to be considered, if it is indeed an offense under the Indian Penal Code and/or the POCSO Act.

What should be the Way Forward?

- **Training for Investigating Officers:** Investigating officers **should be provided with proper training on the handling of POCSO cases**. This can include **training on the proper techniques for collecting and preserving evidence**, interviewing child victims and witnesses,

and the legal requirements of the POCSO Act.

- Eg. the Tamil Nadu police guidelines directing police personnel to not act hastily when arresting youngsters for romantic cases under POCSO is one intervention to address the Act's tendency to overcriminalise.
- **Revising the act:** Revising and updating the POCSO Act in order to address the changing needs and realities of modern society is important in order to ensure that the act continues to serve the needs of children and promote their rights and well-being.
 - In a recent speech at the Delhi Commission for Protection of Child Rights, former Supreme Court judge, Justice Madan Lokur talked about the need to evolve a separate procedure for children while dealing with POCSO cases.
- **Harmonizing the age of consent for sexual activity** with the age of consent for marriage, which is 21 for males and 18 for females, would help to reduce confusion and promote greater consistency across different areas of law.
- **Promoting positive and comprehensive sexuality education:** Promoting positive and comprehensive sexuality education, including education about consent, would help to reduce the incidence of sexual offences against children and promote greater understanding of the issue among young people and wider society.
- **Improving data collection and analysis:** Improving data collection and analysis, including through the establishment of a centralized database of reported cases, would help to better understand the extent of the problem and to identify areas for improvement in the legal process.

UPSC Civil Services Examination Previous Year Question (PYQ)

Q. With reference to the United Nations Convention on the Rights of the Child, consider the following: (2010)

1. The Right to Development
2. The Right to Expression
3. The Right to Recreation

Which of the above is/are the Rights of the child?

- (a) 1 only
- (b) 1 and 3 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Ans: (d)

Exp:

- The United Nations (UN) took its first step towards declaring the importance of child rights by establishing the United Nations International Children's Emergency Fund (UNICEF) in 1946. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, making it the first UN document to recognise children's need for protection.
- The first UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights.
- The convention, which came into force on the 2nd September 1990, consists of 54 articles covering various categories of child rights including right to life, right to development, right to engage in play and recreational activities, right to protection, right to participation, expression, etc. **Hence, 1, 2 and 3 are correct.**
- **Therefore, option D is the correct answer.**

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