Age of Consent in POCSO Act

Why in news?

The 283rd report of the Law Commission of India (LCI) recommendation on age of consent under the Protection of Children from Sexual Offences (POCSO) Act, threatens to criminalise the young.

Key provisions of POCSO Act 2012
• The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted in consequence to India's ratification of the *UN Convention on the Rights of the Child in 1992*. • It is the first comprehensive law in the country dealing specifically with sexual abuse of children. • **Aim**- To address offences of sexual exploitation and sexual abuse of children • **Gender neutral**- The Act defines a child as "any person" under the age of 18. • **Offences** - Storage of child pornography material has been made an offence. • **Non-reporting**- If a person in charge of an institution who fails to report the commission of a sexual offence will face punishment excluding children. • **Time limit-** A victim may report an offence at *any time*, even years after the abuse has occurred. • **Privacy-** The Act forbids the disclosure of the victim's identity in any form of media unless authorised by the special courts established by the Act. • **Procedure**- It also defined the procedure for reporting of cases, including a provision for punishment for failure to report a case or false complaint. • **Child-friendly manner-** The procedures for recording of the statement of a child by the police and court should be done in a child-friendly manner.

What is the issue with age of consent in POCSO Act, 2012?

- **Issue** - The Act defines a child as a person below 18 years of age thereby fixes the age of consent at 18 years.
- Under POCSO, consent of a "child" is immaterial and consensual sexual intercourse with or among adolescents is treated *on par with rape.*
- **Impact**-
  - **Boys/ young men**- They are charged with sexual offences
  - **Girls-** They are treated as victims and institutionalised in children's homes on refusal to return to their parents or if their parents refuse to accept them.
- **Relief-** The only relief available to the couple is to urge the *High Court to quash the case under Section 482 of the CrPC* to prevent abuse of the process of any Court to secure the ends of justice.

What is the judiciary's stand with respect to age of consent?

- In ***Rama @ Bande Rama v. State Karnataka***, the High Court quashed criminal proceedings under the IPC and POCSO Act which involves a consensual relationship of

a minor girl.

- In ***Vijaylakshmi v. State Rep (2021)***, the Madras High Court observed that punishing an adolescent boy who enters into a relationship with a minor girl was never the objective of POCSO Act.
- In ***Raj Kumar v. State of Himachal Pradesh (2021)***, the Himachal Pradesh High Court allowed a petition filed by the minor girl's father for quashing the trial against his son-in-law.
- In ***Skhemborlang Suting v. State of Meghalaya (2021)***, a couple got entangled under the POCSO Act as the wife was a minor.
- ***Karnataka High Court*** has asked the Law Commission to rethink the age criteria for consent under the POCSO Act considering the rising number of cases.
- ***Madhya Pradesh High Court*** drew Commission's attention on how the enforcement of the POCSO Act causes gross injustice in cases of rape where de facto consent is present.
- The Court requested to suggest amendment to the POCSO Act, vesting discretionary power in the Special Judge to not impose the statutory minimum sentence in certain cases.

What are the recommendations of Law Commission?

- **Age of consent**- It favours *retaining the age of consent at 18 years,* to criminalise both abuse and non-coercive consensual sex, even when this occurs between peers.
- **Less sentence**- If the offence committed on the child was at the age 16 or above and if the special courts are satisfied that the relationship between the accused and the child has been intimate, it can in its discretion impose lesser sentence than 10 years.
- **Special court**- While reducing sentences the court will have to take into account the
    - Tacit approval of child
    - Age gap between the accused and child not more than 3 years
    - Accused does not have a criminal record and should bear a good conduct after the occurrence of offence
    - Accused married the child on attaining majority and they are leading a happy married life
    - Whether any child was born in the relationship between the accused and the child etc.,
- **Marital rape**- The amendment regarding the age of consent is necessary because currently IPC section 375 and 376 states that even if the husband has consensual sexual intercourse with his wife who is below the age of 18 years, it will amount to rape.
- **International regulatory landscape-** The report outlines approaches adopted in the US, Canada, Japan, Australia and South Africa, which have lower ages of consent and protect adolescents from shame and stigma for consensual sexual activity through close-in-age exceptions.
- **Awareness**- Comprehensive and age-appropriate sex education should be made mandatory part of school curriculum and
- Government programs like *Rashtriya Kishor Swasthya Karyakram* should be utilized to inform and empower the adolescent population of India.

What are the concerns with the recommendations?

- **Close in age exception**- It operates at the sentencing stage, so consensual sexual activity with a minor between 16 and 18, even where the accused is not more than 3 years apart, remains an offence.
- The exception allows sentence reduction and not sentence waiver. The taint of criminalisation and imprisonment still remains.
- **Tacit approval**- Tacit approval is introduced to replace consent and its usage without definition is confusing
    - **Consent-** It is defined in law, backed by jurisprudence.
- **Checklist of circumstances**- It is provided to guide whether or not exemption operates.
- Provisions like pregnancy, marital status, family acceptance etc., suggest that judicial discretion is guided in favour of underage sexual relations which occur within socially conforming marriages backed by familial support.
- **Limited stakeholder consultation**- The report missed inputs from public health experts, gynaecologists, child psychologists, counsellors, and shelter homes.

What lies ahead?

- The need of the hour is age-appropriate sexuality education, access to confidential medical counselling, and prohibits laws from criminalising consensual sexual activity with peers.
- Criminalisation renders girls vulnerable to greater violations. The protection of girls is best secured through social security measures.
- With the Law Commission sidestepping these issues, the matter rests with the courts to address the sensitivity on a case-to-case basis, and the continuation of public dialogue.

References

1. The Hindu- Law Commission about age of consent
2. PIB- 22nd Law commission report on age of consent

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