Madras HC on POCSO Act - Age of Consent and Age Gap

Why in news?

The Madras High Court suggested changes in provisions regarding the age of consent and the age gap in the POCSO Act.

What are the suggestions made?

- The Madras HC recently acquitted a young accused of sexual assault charges under the Protection of Children from Sexual Offences (POCSO) Act, 2012.
- It also made two significant suggestions:
    i. the age for the definition of a “child” under Section 2(d) of the POCSO Act be taken as 16 rather than 18
    ii. the POCSO Act account for the difference in age between the offender and the girl involved in consensual sex
- This means that any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the purview of POCSO Act and the rigorous provisions therein.
- Such sexual assault, if it is so defined, can be tried under more liberal provision.
- This is to distinguish the cases of teenage relationship after 16 years, from the cases of sexual assault on children below 16 years.
- It also suggested that the Act be amended such that the age gap is not more than 5 years or so in consensual sex where one is aged 16 and above.
- This is to ensure that the vulnerable age of the girl is not taken advantage of by a person who is much older.

Why is the 'age of consent' change welcome?

- The POCSO Act denies consensual sexual agency for young persons falling in the 16 to 18 years age bracket.
- It entails a long 7 to 10 years of rigorous imprisonment for the offender.
- But a lot of experimental consensual sexual acts take place in the age group between 16 and 18.
- However, on coming to parents' knowledge, in most cases, the parents of the girl lodge a complaint that it was non-consensual and the boy is punished.
- Decriminalisation of consensual sex between those aged 16 and 18 will help

address such false complaints.
- Physical relationships between such teenagers due to infatuation/innocence could be insulated from rigorous provisions.
- It also acknowledges that consensual sex cannot be criminalised at an age when sexual exploration is common.

What is the contention with the age gap?

- An older man using his power and position to exploit a younger woman could be subjected to criminalisation.
- But just because there is more age gap between the alleged offender and the victim, a consensual act cannot be criminalised.
- Nevertheless, it could prevent a much older person from exploiting a minor and her innocence.
- Age difference not being more than 4-5 years is followed in the UK.
- In the US also there are close-in-age exemptions, also called Romeo and Juliet laws.

What lies ahead?

- The government will have to take steps to eliminate the unwarranted criminalisation of consensual or romantic sexual relations.
- Any relaxation of stringent punishments entailed in the Act may also be misused.
- So the most critical thing here is to distinguish between the consensual sex between adolescents and abuse or exploitation.
- The onus is on investigating officers to differentiate between the two.
- But Inspectors and SIs are often driven by their moral compass around sex and sexual acts.
- They should be sensitised and imparted with intelligence and self awareness for nuanced reading and application of the law.

Source: Indian Express, The Hindu

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