Right to Privacy of Adolescents

> ***Mains:*** *GS2 - Government policies and interventions for development in various sectors and issues arising out of their design and implementation | Mechanisms, laws, institutions and Bodies constituted for the protection and betterment of vulnerable sections | Important aspects of governance*

Why in the news?

Recently, the Supreme Court delivered a landmark verdict in Right to Privacy of Adolescents, refusing to sentence a man convicted under the POCSO Act after considering the victim's wishes and socio-economic background.

What is the POCOSO act?

- **POCOSO** - The Protection of Children from Sexual Offences (POCSO) Act was passed *in 2012 to protect children under 18 years* from sexual abuse and exploitation.
  - **Child** – All persons below 18 years treated as child.
  - **Adult** – All persons who attain age of 18.
- **Purpose** - It *criminalizes all sexual activity with minors*, including consensual acts, without consideration for the adolescent's agency or context.
- **Provisions** - Crimes like penetrative assault (Sec 4/6), rape (Sec 376 IPC), and kidnapping (Sec 361 IPC) are read together in such cases, mandating stringent sentencing.
- **Section 6** – It deals with *Punishment for aggravated penetrative sexual assault*.
- It says that is whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for not less than 20 years, but which may extend to imprisonment for life
- **Inclusion of adolescent as a Child** – It *does not recognize consensual sexual activity among or with adolescents aged 16 to 18 years* and such acts are criminalized under the Act.

> *World Health Organization (WHO) defines* ***adolescence as 10-19 years****.*

To know more about POCSO, click here

What is the issue?

- **Case** – It involved a 14-year-old girl from rural West Bengal who left her home to be with a 25-year-old man, who later got married and had a child in 2021, when she was

17.

- The man was arrested subsequently and tried for kidnapping, rape, aggravated penetrative sexual assault, and child marriage.
- **POCSO Special Court** – It sentenced the accused to *20 years imprisonment*.
- **High Court** – It noted the socio-economic background of the couple who did not understand that their relationship constituted an offence.
- Taking a "humane view of the matter to do complete justice" the High Court *reversed the lower court's conviction*.
- **Issues** – The High Court noted that "the approach adopted under the POCSO Act renders adolescents vulnerable to criminal prosecutions for normative sexual behavior.
- The *court also made problematic comments* that female adolescents should "control sexual urge/urges" that created an outrage in media which mad the *Supreme Court took up the matter suo moto*.

What are the key judgements by the Supreme Court?

- **Initial verdict** - It restored the accused's conviction and *rejected the concepts of "non-exploitative" sexual acts* with a minor aged 14 years, and the category of "*older adolescents*".
- **Ordered to form an enquiry committee** - It directed the state to appoint an expert committee to ascertain whether the "victim" — now an adult — wanted to continue living with the accused or preferred to accept benefits offered by the State Government.
- The committee was to comprise a clinical psychologist, a social scientist, and a child welfare officer.
- **Observation** - The committee's report and the Court's interaction with the woman revealed the heavy emotional & financial toll that the legal battle had had on the family and the "collective failure of the systems" in protecting her.
- **Final verdict** - It concluded that in this case, "*true justice lies in not sentencing the accused to undergo imprisonment*", adding that "if we send the accused to jail, the worst sufferer will be the victim herself."
- It exercised its ***extraordinary jurisdiction, under Article 142*** of the Constitution, and did *not impose any sentence on a young man* convicted of aggravated penetrative sexual assault under Section 6, Protection of Children from Sexual Offences (POCSO) Act.

> ***Article 142*** *of the Indian Constitution deals with enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. It deals with the powers of Supreme Court in ensuring complete justice.*

What are the challenges with the case and its judgments?

- **Non alignment with human rights law** – Both the concept of non-exploitative sexual acts and the concept of older adolescents are recognized under international human rights law.
- General Comment No. 20 by the Committee on the Rights of the Child under the

UNCRC, exhorts States *to "avoid criminalizing adolescents of similar ages for factually consensual* and non-exploitative sexual activity".

> *The **UN Convention on the Rights of the Child (UNCRC)** is an important, legally binding agreement signed by 196 countries (as of 12 July 2022) which outlines the fundamental rights of every child, regardless of their race, religion or abilities. India ratified it in 1992.*

- **Refraining from normalizing the verdict** - Both the High Court & Supreme Court *barred their cases from being treated as precedent*, with the top court describing this as an "extraordinary" case.
- The judicial reluctance reveals the *limitations of case-by-case exceptions* and the urgent need for structural reform.
- However, empirical studies suggest that adolescent relationships, especially above 16 years, is not extraordinary but a common reality.

Increasing Consensual Adolescent Relationships
• An Enfold study showed that out of 7,064 POCSO judgments in Assam, Maharashtra and West Bengal between 2016 to 2020, 24.3% involved romantic relationships, with *82% of victims in such cases refusing to testify against the accused.* • Another study by Enfold and P39A on judicial trends in 264 cases under Section 6, POCSO Act from these States found that *25.4% involved consensual relationships.*

- **Non consideration of scientific reasons** - scientific studies confirm that sexual exploration is normal for older adolescents.
- **Structural flaws** – The case exposes the fundamental tensions within the POCSO Act and ground realities of adolescent sexuality.
- Here, the legal crime did not cause any trauma on this particular victim but the legal consequences thereafter.
- The Supreme Court admitted that the case reflected a "total failure of legal, family, and social systems", with the adolescent left unsupported by either the state or family.

What lies ahead?

- Reforms may be done in POCOSO framework for considering the reality of adolescent relationship as given under international human rights law.
- It is imperative for India to reconsider age of consent laws, promote supportive frameworks, and align legal standards with adolescent psychology and international best practices.

Reference

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