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The Catapulting Effect of Detached Interpretation of POCSO Provisions: In the Light of Recent Vijayalakshmi & Anr. V. State & Anr.

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ABSTRACT

The history of child sexual abuse in India had been long-standing and ignored. The Non reported Cases often pose a pseud-reality of absenteeism. However, the pro-activeness of social and traditional media outreach has pierced through this veil of misinformation and have been successful in bringing forth the truth. The POCSO Act³ is the result of legislative intent for safeguarding the interests of minors who are unfortunately subjected to sexual crimes. Article 15(3)⁴ enables the legislature to make special laws in the case of women and children for protecting them from the vulnerability that they suffer in society. It is an active redressal to the issue but on a parallel aide needs a careful interpretation owing to its detrimental nature. While ensuring the safety of sensitive group it should be seen that the offences where both the parties are in their innocent furtherance and unaware of reprimanding effects of the respective law shall be handled carefully. The paper aims at bringing forth the social dilemmas created by the reprimanding effects of the POCSO Act where Accused even before the conviction loses its locus standi in the society. There have been enormous reports of fake infliction of the provisions of the said legislation, thereby destroying the person's life irretrievably. This paper in the light of a case recently decided by Madras High Court⁵ analyses the current approach towards such cases and also discusses the deprivation experienced by Minors after being thrashed by POCSO provisions. The paper attempts to unfold the inimical effects of the respective law on the liberty of an individual guaranteed by article 21⁶ where the offence has been committed by the nature of adolescence of both parties.

Keywords: POCSO, Consensual Sex, Frivolous Criminalization, Child Sexual Abuse, Adolescents-Relationships

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³ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

⁴ INDIA CONST. art. 15, cl. 3.

⁵ Vijayalakshmi & Anr. v. State & Anr, CrI.O.P.No.232 of 2021 and CrI.M.P.No.109 of 2021 (India)

⁶ INDIA CONST. art. 21.

I. UNDERSTANDING THE PROPOSITION: POCSO AND ITS NEED

India is one of the rapidly developing countries in the world with a population of over 1.39 billion⁷, out of which almost 41% is below 18 years of age⁸. This 41% is the future of the country therefore, their welfare shall be the primary concern of the state. The social environment of children has ameliorated in the past decade quite antithetically, progression in concerning the administration of their rights and securing a welfare-based society has solidified their inclusion in the social sphere.

Before POCSO (Protection of Children from Sexual Offenses) was introduced in the year 2012, there were no separate legislations for sexually offended children except the Goa children's Act, 2003⁹, which extended only to the State of Goa. However, the state incredibly failed at its implementation. Although the Indian Penal Code Expressly provides provisions for sexual crimes which includes section S. 375, S. 354, S. 377, & S. 509 however, all of these provisions suffered from inadequacy. section 375¹⁰ covers rape but the section mandates the traditional penal-vaginal intercourse, section 354¹¹ covers outraging modesty but fails at the clear definition of modesty, section 377¹² IPC consisted the infamous chapter of unnatural offences and Section 509¹³ defined insulting the modesty of a woman, thereupon again the subject of modesty remains undefined. Moreover, all these laws are women-centric thereby passively depriving the redressal to sexual crime against men and lacked in terms of specific and effective sanctions. The absenteeism of provisions providing for punishment in the cases of abetment of an offence from a significant period has reciprocated a hostile environment for children subjected to sexual abuse. It is noteworthy that sexual aggression against children not amounting to rape was unaccounted by the definition of crime before 2012.

Youths are the future and the development of the country depends on the young generation. However, expecting a young mind to focus on the future whereas the past has left the child traumatized for life, is a bizarre exposition. Deficiency of special provisions for child victims, mentally ill children and children devoid of enough resources, unavailability of child-friendly

⁷ United Nation Organization, *World Population Ageing 2015*, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS POPULATION DIVISION (May 20, 2021, 11:40 AM), https://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2015_Report.pdf

⁸ FP Staff, *Latest Census data shows youth surge: Nearly 41% of India's population is below the age of 20*, FIRSTPOST (May 20, 2016, 11:34 AM), <https://www.firstpost.com/india/latest-census-data-shows-youth-surge-nearly-41-of-indias-population-is-below-the-age-of-20-2581730.html>.

⁹ The Goa Children's Act, 2003, Goa Act 18 of 2003 (India)

¹⁰ Indian Penal Code, 1860, sec. 375, act 13 of 2013, s.9

¹¹ Indian Penal Code, 1860, sec. 354, act 13 of 2013, s.9

¹² Indian Penal Code, 1860, sec. 354, act 45 of 1860

¹³ Indian Penal Code, 1860, sec. 509, act 45 of 1860

courts, and victim counselling acted as perpetual obstruction before the legislative as well as judicial intent to address the growing concern. In ***Sheela Barse Vs Union of India***¹⁴, the paucity of provisions addressing the illegal detention of children has been adequately discussed. Weighing in the apathy of victims of sexual abuse under the POCSO, there used to be a pressure on the victim as in many cases the accused used to be a known person like a family member¹⁵, police officer¹⁶, teacher¹⁷, a doctor, etc

Lack of effective legislation rendered the financially deprived youths more vulnerable to inhumane crime¹⁸. Due to lack of legal aid, and responsible machinery it became unfeasible to fix the accountability of the crime. In the case of the ***State of Karnataka vs Manjanna***¹⁹, the hospitals refused to medically examine the child before a police request for the same was received.

POCSO Act aims protection children from sexual offenses and overcoming the evils of the society that a child experiences through the developmental pathway. POCSO does not merely provide for crimes such as child rape, harassment, and exploitation of children, nonetheless aims at making the legal process easy on the victims of these crimes. It endows for counselling by officers of the Delhi Commission for women and legal aid. POSCO has increased the scope of reporting by providing a safe environment for children. Recorded rape cases against children have increased from 5484 in 2010 to 8541 in 2012 after the introduction of the Act²⁰. However, its furtherance by the responsible officials has shown serious side effects, with rampant wrongful criminalization to the undue advantage of Minor's position. In a recent case, Madras High Court came up with a bold and clear judgment on how to treat offences where the sexual deviation among the adolescents is consensual. It vocalized the acute demand for the guidelines for dealing with such cases and putting an end to the frivolous violation of firm legislation.

II. CONTEMPORARY SIGNIFICANCE OF THE POCSO ACT

The POCSO Act was introduced in 2012 with an aim to protect individuals below 18 years of age from sexual abuse. These include child rape, harassment and exploitation of children for pornography. It provides a safer medium for reporting a crime, recording evidence, procedure

¹⁴ Sheela Barse v. Union of India, JT 1986 136 (India).

¹⁵ Gorakh Daji Ghadge v. State of Maharashtra, 1980 CriLJ 1380 (India).

¹⁶ Tuka Ram And Anr v. State of Maharashtra, 1979 AIR 185 (India).

¹⁷ Ghanshyam Mishra v. state of Orissa, 1985 II OLR 409 (India).

¹⁸ Gurcharan Singh v. State of Haryana, 1972 AIR 2661 (India).

¹⁹ State of Karnataka v. Manjanna, 2000 (3) SCR 1007 (India).

²⁰ NCRB, Crime Against Women, NATIONAL CRIME RECORD BUREAU (May 21, 2021, 2:00 AM), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%205-15.11.16_2015.pdf

of trial and investigation for the victim. When a complaint is made to a special Juvenile police unit, immediate measures are taken for relief and rehabilitation at the same time protecting the rights and dignity of the individual²¹. Multifold appreciative steps such as supportive architecture like child welfare committee were introduced for mental support of the victim, identity of the victim was protected²². Special courts were introduced for speedy disposal of cases. No person below the age of 18 was allowed to be detained at a police station at night. In addition to medical attention, steps for protection of victim such as no contact of the subject with the accused and recording of statement at the comfort of the home etc. were brought in. POCSO also addressed the victims of abuse in child marriage, the Apex courts in 2018 held that sexual intercourse with a girl below the age of 18 years is rape irrespective of her marital status and exception 2 of section 375 under IPC is violative of the right to equality and non-discrimination. It held that this classification of married girl child violates the right to life of those between 15 to 18 years of age²³.

The main object of the Act was to provide a system where are child victim feels safe rather unattended, alone and cut off from society, leaving the person not only victim of abuse but also traumatized by law. It was made necessary that where two interpretations are possible, the interpretation in favour of minors should be adopted to meet the ends of justice²⁴.

Although POCSO turned out to be one of the finest legislations, however, it still has some areas to work upon. Insufficiency of Police training and absence of training programs are among them. The POCSO Act enumerates provisions for special courts for speedy disposal of cases, whereas on the contrary, only a handful of courts have been made after the commencement of the Act. Scarcity of funds, poor infrastructure, non-existent psychological services, oblivious planning for mental professionals and the government's sheer negligent approach in providing support for the same has rendered the implementation of the legislation ineffective. It is the discrepancy about consented sexual intimacy between adolescents²⁵ that has rained havoc on youth in the form of pseudo criminalization, nonetheless, such arrests and detentions do not cater for the original objective of the law. It has become an alarming issue, hereupon as it questions the purpose of the Act altogether and brings forth the ill effects of decisions of the court that are in furtherance of validating the legislative mandate. Baffling directions on consent for medical examination and unavailability of provisions for

²¹ Arjun Kishanrao Malge v. State of Maharashtra, Public Interest Litigation (ST.) NO.2206 OF 2020 (India).

²² Nipun Saxena & Anr. V. Union of India & Ors, Writ Petition Civil no. 565 of 2012. (India).

²³ Independent thought v. Union of India, W.P. (Civil) No. 382 of 2013 (India).

²⁴ Jagar Singh v. State of Himachal Pradesh, Cr. MP(M) No. 1112 of 2014 (India).

²⁵ Maula v. State of Maharashtra, Criminal Appeal No. 906 OF 2018 (India)

the compensatory treatment of the victim has rendered the lower economic strata more vulnerable to legislative deformities. POCSO has inbuilt malformation regarding the age of the victim as the Act mentions only the biological age and is completely oblivious of the proposition of mental age of persons²⁶. The victim's statement before the magistrate is recorded after 2-3 days and not immediately after the crime which further leads to a weak case. The Legislation introduced was vivid and meticulous in securing its objectives however issues as such result in complications and delay in meeting the ends of justice.

III. AN ONGOING TUSSLE BETWEEN SOCIAL DILEMMA AND THE LEGAL OBLIGATION: CRITICAL APPRAISAL OF THE ARGUMENTATIVE STATE OF CONSENSUAL SEX BETWEEN ADOLESCENTS.

The inhibitions of sexual instincts after the intersection of adolescence are a natural occurring. These significant changes thereby uphold a major contribution to the developmental pathway, relationships in furtherance of love and attraction being one of them²⁷. Adolescents being the incidental subjects of the POCSO Act 2012 often fall into the clutches of this stringent legal framework. It is the ethnic complexities of socially rooted values and belief that primarily solidifies families' influence in one's personal life decisions. Right from career dilemmas to finding a suitable partner family plays a significant role. It is due to such undue pressure, the adolescents striving for freedom and independent choices end up running away with their partners²⁸, thereby without computing the gravity of repercussions that arises further. As per the Protection of Children from Sexual Offences Act 2012, the valid age for legal consent is 18 years, any form of consent otherwise shall have no effect. Moreover, the POCSO Act does not mandates penetrative sex to construe the offence under the legislation²⁹, therefore, landing the adolescents into a legal nightmare. Hence, the sufferings of an Adolescent who is probably under the effects of hormones by the virtue of their age becomes a subject of a serious socio ethical dilemma.

²⁶ Eera through Dr. Manjula Krippendorf v. State (NCT of Delhi) and Another, 2017 SCC OnLine SC 787 (India).

²⁷ Manjula Basavaraju, Janardhana Navaneetham, *Beyond Infatuation and Love: Review of Adolescent Mental Health Manuals in India*. 20 AMH. J. 3, 3-8, (2019)

²⁸ Manjula Basavaraju, Janardhana Navaneetham, *Adolescents romantic relationship: dynamics of parent-child relationship from India*. INTECHOPEN (May 22, 2021, 06:00 PM) <https://www.intechopen.com/books/maternal-and-child-health-matters-around-the-world/adolescents-romantic-relationship-dynamics-of-parent-child-relationship-from-india>

²⁹ Swagata Raha, Anuroopa Giliyal, Geeta Sajjanshetty, & Shruthi Ramakrishnan, *Frequently asked questions on the Protection of Children from Sexual Offences Act, 2012, and the Criminal Law (Amendment) Act, 2013*, SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT OF RAJASTHAN (May 23, 2021, 10:00 AM) <https://sje.rajasthan.gov.in/siteadmin/Uploads/201908261611310791pocsoact2013.pdf>

World Health organization defines adolescence as someone between age 10 and 19. It is the age that derives the sexual curiosity therefore, physical attraction is explored. However, in a parallel world, it aches to see a girl who is 17 is sent to remand home and a boy who is 19 is imprisoned for consensual sex or running away and getting married. The question that arises in the first place is why does it happen? Owing to the stereotypes, in India sex needs to be mandatorily legitimized in the eyes of society. It is considered taboo to indulge in sexual activity that is not solemnized by a valid marriage. The obsession with legitimizing sex has unduly burdened the youth of the country thereby, pushing them to commit to hasty decisions. Ironically the legislation that was designed to protect the young children has now been weaponized to suppress their liberty and sexual freedom³⁰.

The POCSO legislation is one of the well-intended and detailed frameworks, however, suffers from a major lacuna. It fails to distinguish between consensual and non-consensual sex between minors and adults³¹. The POCSO Act and the machinery under it have shown swift results in the preliminary stages. There has been a callous increase in the reporting of cases where a minor was subjected to sexual abuse, irrespective of the act being penetrative or not. The legislation mandates setting up specialized courts to ensure speedy trial³². It is in spirit and true intent of the legislature that this piece of legislation aims to crumble down the instances of child sexual abuse and sanctioning the offenders under such special provisions.

POCSO, however, treats every sexual activity below 18 years of age under the radar of illegality. It fails to keep up with the changing norms of the modern world where sexual behaviour before turning 18 is a common prevalence. The legislation weights the consensual and non-consensual sexual acts at equal Par value. POCSO Act presents a perfect case for partly rigid and partly flexible legislations, failing to which a well-intended policy can also have negative impacts.

Apart from socio-ethnic values and moral dilemma, it is the law regarding consent in the Indian paradigm that refrains the consensual sexual behavior of a person below 18 years, that is, a valid consent. The apex Court in the case of **State of Madhya Pradesh vs Balu**³³, upheld that, consent given by a person below the age of 18 shall not be considered valid. The POCSO Act in this reference falls at odds with **Article 12 of UDHR**³⁴ whereby, every human

³⁰ Vaishna Roy, *How Young Is Too Young for Consensual Sex?* THE HINDU (23 May, 2021, 10:40 AM) <https://www.thehindu.com/society/pocso/article29595371.ece>

³¹ sec. 2(d), The Protection of Children from Sexual Offences Act, 2012, No. 32 of Parliament, 2012 (INDIA).

³² sec. 28, Protection of Children against Sexual Offences Act, 2012, No. 32 of Parliament, 2012 (INDIA).

³³ State of Madhya Pradesh v. Balu, Appeal (crl.) 1273 of 2004 (INDIA).

³⁴United Nation Organisation, art. 12, UNITED NATION DECLARATION OF HUMAN RIGHTS (May 24, 2021, 10:00 AM), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

is entitled to the right of privacy, the same has been also upheld as a fundamental right in **Puttuswamy judgment**³⁵. It is true that the judicial bodies have aligned themselves more towards the broader interpretative trend and prefer liberal exposition of the provisions, nevertheless, the legislature as well needs to understand that stringent statutes tend to deliver effectively but also poses a serious threat to individual liberty, thereby increases the risks of greater collateral violations. In the case of **Sabari Vs Inspector of Police**³⁶ High Court while delivering judgment observed in the form of obiter dicta that, consensual Sexual activity between minors above the age of 16 should not be considered as criminal activity.

POCSO criminalizes every type of sexual behaviour from kissing, necking to penetrative sex. The legislation does not leave any factor to be evaluated before prosecuting the accused as to his age and magnitude of the offence. Apart from this, 'He' is the pronoun used throughout the entire statute that points out the legislative sexism that only a man can be prosecuted under this legislation. The Statute is very determined in its aims and objectives and after its incorporation, is suggested to be effective in curbing down the sexual abuse against children. However, the parallel data presents a different picture. A recent study of 2,788³⁷ cases under the POCSO Act by the Centre for Child and the Law (NLSIU- CCL) suggests that 20.5% of cases on average in which the girl was in a relationship with the alleged accused. HAQ: Centre for child rights' research on special courts revealed that 35% of cases (79 of 224) were those where both parties were in love and the act committed was in furtherance of love and affection³⁸. Another Survey by Aarambh India (Prerna) in Mumbai analyzed a sample of 260 cases out of which in 25% of cases both the parties were involved in consensual Sexual Activity³⁹. The conceptual alliance of the above-shared statistics mandatorily puts forth the need of marginalizing the difference between consensual and non-consensual sexual activity among adolescents, thereby defenestrating the unwarranted criminalization of youths.

- **Paradoxical Arc Between the Psychological Progression and Legal Imperative**

It is the highly unbalanced apparatuses of social advancement and legislative imperative that needs to be reviewed about the current issue under POCSO. Adolescence being the age of

³⁵ K.S. Puttaswamy and Anr. v. Union of India and Ors., SCC OnLine SC 996 (INDIA).

³⁶ Sabari v. Inspector of Police, 2019 SCC OnLine Mad 18850 (INDIA).

³⁷ Centre for Child and Law and National Law School of India University, *Implementation of the POCSO act, 2012 by special courts: challenges and issues*, NATIONAL LAW SCHOOL OF INDIA UNIVERSITY (NLSIU) (May 21, 2021, 12:35 PM), <https://feministlawarchives.pldindia.org/wp-content/uploads/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1-1.pdf>

³⁸ Bharti Ali, Maharukh Adenwalla & Sangeeta Puneekar, *Implementation of the POCSO Act Goals, Gaps and Challenges*, HAQ: CENTRE FOR CHILD RIGHTS (23 May, 2021, 05:42 PM), <https://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

³⁹ Swapna Majumdar, *Find A Better Alternative*, THE PIONEER (May 24, 2021, 06:12 PM), <https://www.dailypioneer.com/2020/columnists/find-a-better-alternative.html>

uncertainty and multidimensional curiosity derives the desires of the teenagers furthermore, sexual behaviour is no different from other desires. Exhibiting one's desires for a romantic partner therefore, is a normal occurrence. A survey suggests that a significant number of adolescents between 13-19 years of age have agreed to sexual activity with their romantic partners out of love and affection for each other⁴⁰.

However, the legislative intent on the issue remains silent, moreover, the passive acceptance of unrestrained detentions of youths perspicaciously states the case. A survey by the Centre for Child and Law, NLSIU represents that among the total cases filed, 21.58% in Delhi, 21.21% in Andhra Pradesh, 20.52% in Maharashtra, 16.59% in Assam, and 5.45% in Karnataka were those that emerged out of a romantic relationship between the parties⁴¹. The sheer disregard of parties being in the effect of their adolescence and the voluminous criminalization of the boy under the statute speaks for the acute abstention of the psychological pathway through which every individual has once passed⁴². It is in *ad rem* that the element of psychological manipulation becomes practically impossible to explore even if either of the parties is in the position of trust⁴³. Thereby rendering the case for raising the age of consent to 18 viable.

IV. PRESERVING THE ACTUAL OBJECTIVES OF POCSO ACT AND CLEARING THE PATHWAY FOR DEVELOPMENTAL NEED

The legislature intends that a Special law serves the purpose proactively, but the legislature whilst providing swift enforcement in POCSO should also tread carefully as it transacts in adolescents' affairs as well. It is the responsibility of the parents and the society at large that the adolescents who are in grip of biological hormones shall be guided and supported⁴⁴. The legislature needs to keep up with the societal needs⁴⁵ and therefore bring forth the amendments for preventing anymore frivolous criminalization. It is a frequent occurrence that

⁴⁰Sodhi G, Verma M & Peltó, PJ. *Seeking gratification: a study of sexual behaviour patterns of adolescents in an urban slum*, IN: KOENIG, MA (ED) REPRODUCTIVE HEALTH IN INDIA (May 22, 10:00 PM), New Evidence. Jaipur, India: Rawat Publications, 303–322, (2008).

⁴¹ NLSIU, *supra* note 34.

⁴² Geetika Mantri, *POCSO criminalizing teen sexuality? NCRB data suggests that may be true*, THE NEWS MINUTE (May 21, 2021, 01:32 PM), <https://www.thenewsminute.com/article/pocso-criminalising-teen-sexuality-ncrb-data-suggests-may-be-true-111281>

⁴³ Helen C Whittle, *Victims' Voices: The Impact of Online Grooming and Sexual Abuse*, HORIZON RESEARCH PUBLISHING CORPORATION (May 19, 2021, 03:23 PM), <https://www.hrpub.org/download/201308/ujp.2013.010206.pdf>

⁴⁴ Apoorva Mandhani, *Punishing Teen Romances Isn't the Intent Behind POCSO, Says Madras HC, Suggests Amending Act*, THE PRINT (May 17, 2021, 07:38 AM), <https://theprint.in/judiciary/punishing-teen-romances-isnt-the-intent-behind-posco-says-madras-hc-suggests-amending-act/595274/>

⁴⁵ PTI, *POCSO Act Never Intended to Treat Adolescent Boy as Offender: Madras HC*, HINDUTAN TIMES (May 15, 2021, 08: 00 AM), <https://www.hindustantimes.com/india-news/pocso-act-never-intended-to-treat-adolescent-boy-as-offender-madras-hc-101611931842909.html>

an adolescent boy is prosecuted for being in relationship with a minor girl, sewing a blatant misinterpretation of POCSO Act⁴⁶.

In the light of a recently decided case, Madras High Court analyses the current approach towards such cases and also puts forward the deprivation experienced by Minors after being thrashed by POCSO provisions. It is empathetically in nature of the sociological structure of the society that the well-being of adolescents should be looked after, moreover it shall be ensured that they do not land into the harsh clutches of law whereby their future depletes and their dreams are shattered.

The following case study shall clear the air on the dilemma as to legal obligation and psychological support to the adolescents. The study encompasses the adverse effect of pseudo criminalization of youths, thereby rapturing their social life and causing psychological imbalance.

(A) Backcloth of the Issue

In the present case, Respondent no.2 was charged under Section 366 of IPC⁴⁷, Section 6 of Protection of Children from Sexual Offences Act, 2012⁴⁸ and section 9 of prohibition of Child Marriage Act, 2006⁴⁹. While the matter was still in court it was unfolded that the 2nd petitioner and the 2nd Respondent were in love and the Acts that were charged under POCSO were done under the furtherance of an affair. Therefore, a joint petition by Defacto complainant and victim girl was filed before Hon'ble Madras High Court for quashing the proceedings against respondent no. 2. The court in what turned into a bold, balanced judgment, in unequivocal terms held, "Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender" was never the objective of the POCSO Act.

(B) Rationale behind the Judgment

The court while determining whether the proceedings can be quashed in non-compoundable offences brought forth the detrimental effects of POCSO on the individual. The court based its findings on the intended objective of the respective law. The court said that punishing an adolescent who enters into a relationship with a minor girl was never the objective of the Act.

⁴⁶ Sanjeev Sirohi, Punishing an Adolescent Boy Who Enters into A Relationship with A Minor Girl Was Never the Objective of POCSO Act: Madras HC, THE SUNDAY GUARDIAN (May 16, 2021, 03:23 AM), <https://www.sundayguardianlive.com/legally-speaking/punishing-adolescent-boy-enters-relationship-minor-girl-never-objective-pocso-act-madras-hc>

⁴⁷ Indian Penal Code, 1860, s.366 (Act 45 of 1860).

⁴⁸ The Protection of Children from Sexual Offences Act, 2012, sec. 12, No. 32, Acts of Parliament, 2012 (India).

⁴⁹ The Prohibition of Child Marriage Act, 2006, Act No. 6 Of 2007 (India).

The Single bench of Justice N. Anand Venkatesh regarded the nature of the offence as private in nature as the relationship between the parties were consensual⁵⁰. The objective of the POCSO Act was to counter the offences that were inimical to the built of the society and its foundations. The court while quashing the proceedings stated that the legislature has to modify the laws with changing times for effective functioning in the society and preventing its misapplications⁵¹. The Hon'ble Court of Madras referred one of its own judgment where the of Ld. Single Judge talked about incidences where teenagers and persons in their early 20s fall in grasps of the stringent Provision of this law. The court held, that when looked carefully at the array of cases under the POCSO Act most of the reported incidences were on the instances of family members of the teenagers against his/her partners. The court referred to the case of the state of *Madhya Pradesh v. Dhruv Gurjar*⁵² for laying down the tests for quashing the proceedings of a non-compoundable offence.

V. ANALYSIS OF THE COURT'S VIEW

Madras High Court throughout the course of the proceeding pointed out the object of the legislation. It is the object of the Act that specifies what a special law aims to achieve. Since the law specifically created is inclusive in nature, therefore, it becomes significant to determine the clarity of the object to facilitate its fair execution as per the case. In the aforementioned matter, the accused and the respondent were in love as result their eloping and consummation of the marriage was in the furtherance of their adolescent state. Although the Act does not need an express intention on the part of offenders the object of the Act strictly provides for offences where a minor has been sexually assaulted and the term assaulted represents the presence of deceit and malafide intention. It is noteworthy that where the acts have been done in the course of a love affair and both the party being in their teenage or effect of adolescence, the element of Deceit or ill intention is absent.

The graveness of the Law is a much-needed antithesis against Raging Sexual crime against minors in the society nonetheless, at the same time all the three organs of the state have to ensure that the rights of a member of the democratic society remain intact. The nature of the crime in the above matter was individual as both parties knew each other and had developed a relationship. Since the furtherance of the alleged crime did not align with the objectives of POCSO, criminalisation in such cases shall be termed as abuse of procedure. To understand

⁵⁰ Srikanth D, *Punishing Teens in Love Not Aim of POCSO, Says Madras HC*, THE TIMES OF INDIA (May 17, 2021, 11:31 AM), <https://timesofindia.indiatimes.com/city/chennai/punishing-teens-in-love-not-aim-of-pocs-o-says-madras-hc/articleshow/80594663.cms>

⁵¹ SANJEEV, *supra* note 43

⁵² *Madhya Pradesh v. Dhruv Gurjar*, (2019) 2 MLJ CrI 10 (India).

the issue at length one has to think about it from the perspective of a teenager and also keep in mind the biological and hormonal changes that shape your behaviour and activities. Depriving one of one's liberty for a lifetime is a huge consideration that is probably under the effect of the responsible flow of hormones⁵³.

Another significant issue involved here was quashing of a non-compoundable offence which theoretically unfeasible when a case is brought under POCSO as it is based upon fundamental exposition that every case under is against the merit of public interest and cannot be compounded between the two parties. The Inherent Powers of Court under Cr.P.C⁵⁴ enables them to exercise their right in the interest of justice based on the principle that, "it is in the interest of the state that a Litigation must end". The tests laid down in **Parbathbhai Ahir @Parbathbhai v. State of Gujrat**⁵⁵ furnished sufficient guidelines for quashing of proceeding. The court stated that if the nature of the matter is private and does not call out the public interest, it can be quashed if that is in the interest of justice⁵⁶.

It is of utter importance that the legislature views the changing needs of society through the spectacles of urgent welfare. The imminent threat to the individual liberty posed by the Frivolous proceedings and abuse of procedure should be dealt with utter exigency. It should be in the interest of the subjects to the respective law that they understand the perilous consequences of their Acts in conflict with the statute. As most of the cases under POCSO are the result of a mutual affair between the teenagers but reported on the assertion of relatives, it becomes pertinent for the legislature to account for that vacuum. The subjective age group shall be made aware of its application and operations. To secure the best interest of Justice it is to ensure that a misapplication of the law does not violate the liberty of a young blooming individual. Therefore, the legislature should realise that it's time that they introduce their policies with the modern ideology of the rising generation ensure their trust, acknowledgement and participation in the process of criminal administration.

VI. SUGGESTIONS AND RECOMMENDATIONS

POCSO is certainly one of the most detailed legislative frameworks and one-of-a-kind statute in the subject of sexual abuse, although the loopholes of it are now painting the broader picture, whereby it is clear that the law that was meant to provide redressal to victims of child sexual abuse has now been weaponised to maliciously criminalize adolescents. The

⁵³ SANJEEV, *supra* note 43

⁵⁴ THE CODE OF CRIMINAL PROCEDURE, 1973 ACT NO. 2 OF 1974 (India).

⁵⁵ Parbathbhai Ahir @Parbathbhai v. State of Gujrat, 2017 9 SCC 641 (India)

⁵⁶ CONST., *Supra* note 4

preposterous abuse of procedure in the cases of consensual sex between the adolescents draws out the desperate thirst for justifying the legislative mandate in the terms of legal obligation. One of the primary reasons for mounting cases of child sexual abuse could be the cases where the sexual activity between the parties was consensual but the legal bar on valid consent brought it under the jurisdiction of POCSO. It's time we start talking about the sexual liberation of the individuals, the homosexuals, pansexual and other sexual minorities who deserve a dialogue. It was after the long years of legal and social battle that led to decriminalising homosexuality. However, the State's monotonous hesitation of validating same-sex marriage discreetly brings forth their true intent thereby, restricting the totality of the same-sex relationship. The aims and objectives of the POCSO Act are crystal clear and its significance at present time is more than ever, however, some serious reforms will unquestionably reduce the collateral damages in the terms of fatuous criminalisation. Following recommendations can be considered as the territory of reforms in the current Law;

1. The Current ongoing debate on the subject ignited the thoughts on reducing the age limit where the parties are above 12 years of age and thereby, considering their consent as a valid one where the sexual behaviour is a result of the compiled manifestation of both the parties.
2. The National Commission for Protection of Child Rights (NCPCR) suggested in its report that (a) A Consensual non- penetrative Sex where both the parties are not less than the age of 12 or more or sharing an age difference of two years, (b) A consensual Penetrative Sex between the parties above 14 years of age or sharing an age difference of three years⁵⁷, should be exempted by the provisions of POCSO.
3. The POCSO has established itself as a milestone in dealing with the cases of Sexual abuse, however, has often failed to protect and uphold the rights of Adolescents. The stringent nature of the statute makes it paradoxically unfavourable for adolescents who are still in their developmental stage. Hence, before a major policy change takes place, the judicial establishments should take a step further and strive towards the application of the Restorative Justice System, based on the Nuances of Gandhian Principles, alongside the principles of Juvenile Justice (Care and Protection) Act 2015⁵⁸.

⁵⁷ NLSIU, *supra* note 34.

⁵⁸ Ministry of Women and Child Development, *Government of India Draft Model Rules, 2016 under the Juvenile Justice (Care and Protection of Children) Act, 2015*. New Delhi MINISTRY OF WOMEN AND CHILD DEVELOPMENT, 2016 (May 24, 2021, 04:00 PM), http://wcdodisha.gov.in/Application/uploadDocuments/plugin/doc20170527_112352.pdf

4. A meticulously drafted law should be introduced that offers a clear and tough response against the acts of coercion, grooming and luring the adolescents under the grip of lust, thereby, victimising them. A clear demarcation as to acts purported out of vicious desires and wanton motivations.

It is now we have started talking about sexual freedom as a part of our fundamental right, recognising adolescent's autonomy over their body and sexual rights is still a long way to go. However, with small policy changes, we can make a better argument for the youths and their idea of liberation. Sex education is one such area where new policies should be put forth, it's the small steps that will cast a bigger influence on the legislature and then we can hope for a hope that an innocent does not fall prey to just another act of abuse of procedure.

VII. CONCLUSION

The commencement of POCSO came forth as much needed aid to prevent and penalise the increasing sexual offences against children. The provisions of the aforementioned statute not only aimed at protecting the rights of the children but also provided comfort and care to the victim to overcome the psychological trauma. POCSO has left behind its successful trail in a plethora of cases however, the law has a serious scope for reform. The legislation succumbs to ensure the reformatory approach towards the underage accused. It has failed severely in demarcating between consensual and non-consensual intercourse among adolescents and the unwarranted criminalisation of youth.

Acknowledging the transitional period from childhood to adulthood through a discreet pathway of adolescence with the repleting effect of cognitive, physiological, physical, psychosexual, and social changes and maturity is the call for the hour. The probable effects of this would comprehensively reduce the cases of child sexual abuse. Various health organisations have stressed sensitising the transformation and therefore it should be ensured that the child receives proper care and support. The articulated analysis of the issue puts forward the urgent need of setting up a policy aiming towards youth grooming and informative initiatives towards making them aware of the laws that are severe in nature whereby they are informed of the aftermath of their actions. National Commission for Protection of Child Rights in a report cited the emergent need of decreasing the age of consent to 16 to deal with complexities of legislative need⁵⁹. Detailed suggestion by NCPCR has been discussed prior under the head of suggestions and recommendations. In a nutshell,

⁵⁹ Kaushiki, Law prohibiting Sexual Offences Against Children Sparks Controversy over Age of Consent, PRS LEGISLATIVE RESEARCH (May 26, 2021, 10:39 PM), <https://www.prsindia.org/theprsblog/law-prohibiting-sexual-offences-against-children-sparks-controversy-over-age-consent>

the current law longs for an inner policy change under the comprehensive structure of the POCSO Act. Effective legal responses from adolescents, sexual confidentiality and a comprehensive structure in sex education in combined effect can provide efficacious redressal to the undue criminalization thereby untwining the rampant abuse of an extensive statutory framework.
