

POCSO: MARRIAGE A SOLUTION?

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INTRODUCTION

The World Health Organisation has defined child sexual abuse as “the involvement of a child in sexual activity as he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. It includes different sexual activities like fondling, inviting a child to touch or be touched sexually, intercourse, exhibitionism, involving a child in prostitution or pornography, or online child luring by cyber-predators.” In India, POCSO faces different challenges about personal laws as the age of majority varies in various personal laws and frivolous cases filed by parents are also a prominent issue before courts. This paper will discuss these challenges in detail.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

This act was passed by Lok Sabha on 22nd May 2012. Before the enactment of this act, there was no legislation as such present to cater especially to victims of child sexual abuse, such incidents used to be covered under various other IPC sections that cover crimes of a sexual nature against adults. Children are not even aware of what is happening to them or it is sexual due to which they are prone to being victims of such crimes to report it. Unlike Section 375 of the Indian Penal Code I.e. Rape, POCSO cover children irrespective of their gender, the act not only punishes those who commit sexual abuse but also those who are aware of sexual abuse being committed and don't report the crime, there is no statute of limitation, the victim can report the case years after it has happened.

AGE OF MAJORITY AND CONSENT

The Majority Act of 1875, previously known as the Indian Majority Act, of 1875, states in Section 3(1) that every person domiciled in India reaches the age of majority upon turning 18 years old. Unless specified otherwise by a personal law, this is the standard age of majority for all individuals domiciled in India. According to Section 3(2), when calculating a person's age,

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the day of birth is included as a full day, and the person is considered to have reached majority at the beginning of their eighteenth birthday. However, if a child has been assigned a guardian or is under the care of a court of wards, they reach majority at the age of 21.

Under Hindu Law, the age of marriage is 18 years for the bride and 21 years for the bridegroom. The government did try to increase the age for the bride to 21 years as well, the bill was introduced in 2021 and now, the Parliamentary Standing Committee on Education, Women, Children, Youth and Sports will have time till October 24 to examine the issue and present its report on The Prohibition of Child Marriage (Amendment) Bill, 2021.

Under Sharia Law, the age of consent is 15 years old. Muslims in India are subject to the Indian Majority Act, which sets the age of majority at 18. Despite Sharia law allowing marriage at 15, the Indian Contract Act of 1872 and the Indian Majority Act of 1875 dictate the legal age for entering into contracts. Although a Muslim marriage (Nikah) is regarded as a civil contract under Islamic law, it also has significant religious and spiritual meaning, thus, there is a conflict between the two. In the case of *Kammu v State of Punjab and Haryana*¹, it was held that the girl was under 15 when she got married, but she is now nearly 16. According to Muslim Law, she reached the age of puberty at 15. Both she and the boy acknowledge their marriage. At the time the petition for protection of life and liberty was filed, she was over 15. Under Mohammedan Law, a Muslim girl can marry without her natural guardian's consent at 15. She has expressed her wish to stay with her husband voluntarily. Therefore, it cannot be considered that he is keeping her in illegal custody. The girl does not want to return to her parents. Consequently, the petition is dismissed, allowing the girl, now over 15, to make her own decisions about her future.

Under Christian law, a minor is anyone under 21 years old who is not a widow or widower. If a minor wishes to marry, they must obtain their father's consent. If the father is deceased, consent must be obtained from the guardian, or if there is no guardian, from the mother. If none of these individuals live in India at the time, no consent is required (Section 19, Indian Christian Marriage Act, 1872).

The Prohibition of Child Marriage Act, however, states that any marriage involving a child (under 18) can be voided at the child's request (Section 3(1), Prohibition of Child Marriage

¹ *Kammu v. State of Haryana*, 2010 SCC OnLine P&H 2338

Act, 2006). The child has the option to file a petition to annul the marriage within two years of becoming an adult (Section 3(3), Prohibition of Child Marriage Act, 2006). Under Christian law, a minor is anyone under 21 years old who is not a widow or widower. If a minor wishes to marry, they must obtain their father's consent. If the father is deceased, consent must be obtained from the guardian, or if there is no guardian, from the mother. If none of these individuals live in India at the time, no consent is required (Section 19, Indian Christian Marriage Act, 1872).

The Prohibition of Child Marriage Act, however, states that any marriage involving a child (under 18) can be voided at the child's request (Section 3(1), Prohibition of Child Marriage Act, 2006). The child has the option to file a petition to annul the marriage within two years of becoming an adult (Section 3(3), Prohibition of Child Marriage Act, 2006).

IS MARRIAGE A SOLUTION TO POCSO CASES?

There are various cases where two consenting minors get involved with each other sexually but later on being discovered or in case of pregnancy, the boy is often being reported under POCSO by unapproving parents which often leads to further mental torture. But at the same time, there are various cases where the abuser marries the minor victim to escape the punishment. Both are prime examples of loopholes in the legislation.

In the case of *K Dhandapani v The State by the Inspector of Police*, it was held that since the rape of the minor when she was 14 years old and then she was married to the abuser, with whom she has two kids. Even though rape took place the abuser was let go because he married the victim.

So, marriage becomes a freeway ticket for predators against the offenses committed by them and they the victim has to live with the very person for the rest of her life?

CONCLUSION

POCSO was brought into place to protect children from sexual abuse but yet there are loopholes in the legislation as discussed above, that need to be addressed. It should not become a weapon in the hands of non-consenting parents regarding the marriage or marriage being used as a way of getting away from the deserving punishment.