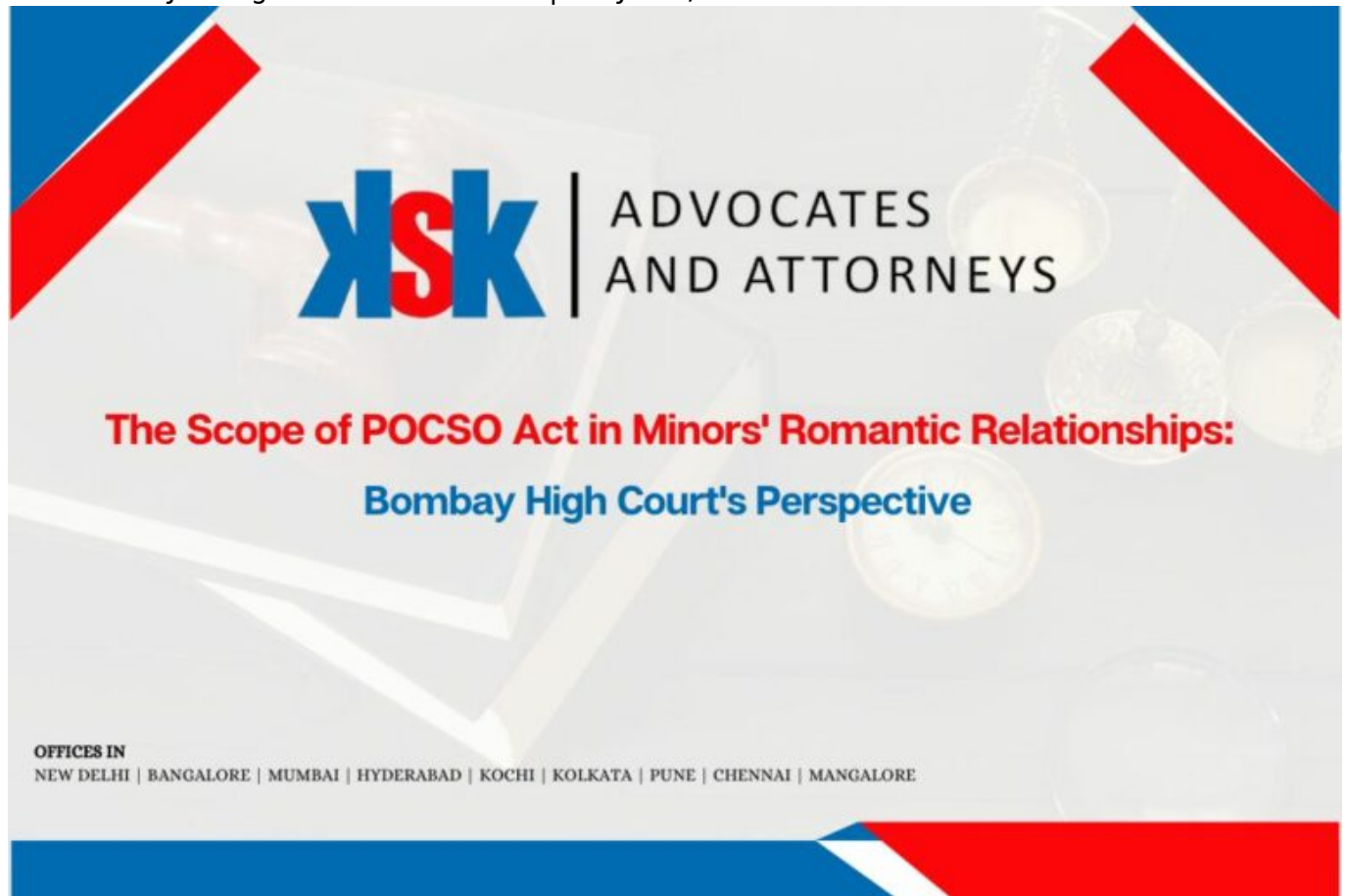


The Scope of POCSO Act in Minors' Romantic Relationships : Bombay High Court's Perspective

written by King Stubb & Kasiva | May 17, 2023



The Protection of Children from Sexual Offences Act or POCSO Act was introduced by the Union Ministry of Women and Child Development in the year 2012 with the objective of protecting children, especially minors from sexual offences like assaults, sexual harassment, pornographic activities, and rape. POCSO is a gender-neutral, special legislation aimed to cater to only children below 18 years of age.

The act has brought out a number of reforms in the procedure of trial and prosecution of child sexual offenders such as making non-reporting of any sexual offence against a child an offence, no limitation for reporting any offence pertaining to child sexual abuse, keeping the identity of victims confidential and establishing fast track courts for trial of sexual offences against children. However, due to the stringent provisions of the legislation, many consensual and romantic relationships between minors have been unfortunately tried as an offence under this act. Keeping in mind this issue, the Bombay High Court has held that the POCSO Act is not meant to punish minors in romantic relationships.

Analysis Of The Judgment

According to Justice Anuja Prabhudessai of the Bombay High Court, the Protection of Children From Sexual Offences Act 2012 came into place for protecting children from offences of sexual assault, sexual harassment and other offences in order to safeguard the interests of children in society. The act is not meant to prosecute and punish minors and label them as criminals for consensual sexual and romantic relationships.

According to Section 2(d) of the POCSO Act, child is defined as any person below the age of 18 years. In the present case, the accused was a 22-year-old man while the girl was also in her late teens and according to the mother of the minor female, the relationship between the couple was consensual and not one established by force or deceit. The court noted the submissions made by both parties along with the statements of the witnesses and complainant and therefore noted that the accused had been in custody since 2021 and the trial had not even commenced. Moreover, considering the pendency of the cases, it was expected that the trial would take a long time to start.

The court, therefore, took note of the age of the accused also and observed that further detaining the accused would lead to travesty on his part and be detrimental to his interest since he was also a young adult and association with hardened criminals in the prison would not do any good to the accused. Therefore, the court granted bail to the accused with certain pre-specified conditions.

In similar cases, various High Courts across the country have taken a liberal interpretation of teenage consensual romantic relationships and noted that it was never the objective or intent of the legislature while enacting the POCSO Act to criminalise such relationships and the act has always focused on making sexual abuse and harassment of children a punishable offence.

In a recent landmark judgment, the Hon'ble High Court of Delhi, while granting bail to a young man in a case based upon an FIR filed by the father of a teen girl accusing him of kidnapping his daughter with the intent of compelling her to marry him, observed that even though the POCSO act is not meant to prosecute a consensual romantic relationship between a couple and in case it has been stated by the victim in her statement that the relationship was consensual and any sexual intercourse had been out of romance and not resultant of any force, compulsion, threat or undue influence, it would be perversity of justice to ignore the statement and let the accused suffer behind the bars for merely having a romantic relationship.

The courts have however, refused to draw any set benchmarks or parameters to distinguish whether a case falls under a consensual relationship or a child sexual abuse and have observed that every case where the question arises as to whether the relationship is consensual or not must be tried as per its facts. However, the courts across the country have been encouraged to take a liberal interpretation of the provisions in POCSO cases where a reasonable suspicion or doubt exists in the mind of the judiciary that the relationship is consensual.

Granting bail to the accused where the relationship is consensual would also lead to prevention of unnecessary detainment of the accused in the custody and therefore be fairer to both the accused and the victim.

Conclusion

The POCSO Act was enacted with the ultimate objective of prohibiting non-consensual and forced sexual relationships with children, including child sexual abuse and sexual harassment. However, it was never the legislature's intention to prosecute romantic relationships between young adults.

While the stringent provisions of the POCSO Act have contributed positively to reducing instances of sexual violence against children, they have also led to an increase in vindictive litigation, with false cases being filed against individuals under the act. The court should examine such cases and, after conducting a thorough investigation, refrain from prosecuting individuals when the evidence suggests that the case is driven by vindictiveness rather than a legitimate reason under the POCSO Act.

The legislature should investigate these situations and introduce reforms to address the issue of fake cases filed under the POCSO Act. Additionally, they should reevaluate the age of consent under the act to ensure that consensual romantic relationships are not subjected to the provisions of the POCSO Act.

In 2019, several amendments were made to the POCSO Act, increasing punishments for specific heinous offenses. These changes were implemented to safeguard the well-being and dignity of every child and deter individuals from committing crimes against children. However, it is crucial for both the legislature and the judiciary to consider further reforms that exclude consensual sexual and romantic relationships, aligning with the original objectives of the act.

Also read - [Decoding POSH Act, 2013 - Prevention Of Sexual Harassment In The Workplace](#)

FAQs

What is the age of consent under POCSO Act?

The POCSO Act has raised the “age of consent” from sixteen years to eighteen years. Such increase has resulted in consensual sexual activity, where one of the parties is an adolescent being criminalised.

What is the punishment for not reporting offences under POCSO Act?

A person who fails to report the offence can be punished with a maximum imprisonment of six months or with fine or both under Section 21 of the POCSO Act.

What is the period of limitation for filing a case under POCSO Act?

Under Section 19 of the POCSO Act, 2012 there is no period of limitation mentioned with regards to reporting of the offences. Therefore, you can definitely file a case as there is no bar in any law.

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