
RE: RIGHT TO PRIVACY OF ADOLESCENTS, 2024 SCC ONLINE SC 2055: A CASE ANALYSIS

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ABSTRACT

In *Re: Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055*, is an important step in judicial interpretation of privacy, consent, and child protection in India. It was occasioned by a case of a 14 year old girl and a 25 year old male after the Calcutta High Court notoriously exonerated the accused on the basis of a consensual romantic affair. By adopting suo motu cognisance, the Supreme Court reiterated that the informed consent of a minor does not possess any legal significance in the Protection of Children from Sexual Offences (POCSO) Act, 2012 because adolescents are not in a position to make an informed consent. The Court affirmed, but by reference to Article 142 of the Constitution reversed the sentence taking into account the marriage and motherhood of the victim, to strike a balance between the harshness of the law and justice which is human. It also commented on how the system failed in bringing guard to the rehabilitation of the victim, the necessity to emphasize the constitution rights to dignity, privacy and equality over the Articles 14 and 21. The verdict balances the lawful protection and the philosophical restorative justice in a way in which the emphasis is put on the holism of adolescent victims and their dignity and the practicality of the law, but does not diminish the protection under POCSO.

Casename: In Re: Right to Privacy of Adolescents (Probhat Purkait @ Provat v State of WB)

Bench: Justice Abhay S. Oka and Justice Ujjal Bhuyan, JJ.

Citation: In Re: Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055.

Law Involved:

1. Protection of Children from Sexual Offenses (POCSO) Act, 2012,
2. Juvenile Justice (Care & Protection of Children) Act, 2015,
3. Constitution of India, 1950 and,
4. Indian Penal Code, 1860.

Introduction

Since the landmark ruling delivered by the 9-Judge Bench of the Supreme Court of India in 2017, there has been a significant development observed in context to Right to Privacy in Indian Law. Taking *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.*¹ as the turning point, Privacy became one of the most requisite rights under Article 21² of the Constitution, which stand irreplaceable for an Indian citizen. But now, beyond Puttaswamy case³, respondents are prying into and changing the boundaries of privacy in every field. This covers data privacy up to spheres such as control over one's body or decision-making ability. In this changing environment, the recent case concerning the privacy rights of adolescents (2025)⁴ could be construed as an important ruling that reconciles with the Juvenile Justice⁵ and POCSO Act, 2012⁶, which guarantees under the Indian Constitution, on dignity and privacy. It will also resolve many social and legal problems involved in young people's affairs.

¹ Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors., (2017) 10 SCC 1.

² India Const. art. 21.

³ *Supra* note. 1.

⁴ Re: Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055.

⁵ Juvenile Justice (Care and Protection of Children) Act, No. 2, Acts of Parliament, 2016 (India).

⁶ Protection of Children from Sexual Offences Act, No. 32, Acts of Parliament, 2012 (India).

The case originated from an extremely difficult situation in which a 14 year old girl, and a 25 year old man with whom she had a good deal of contact as his assistant in business or public affairs over some time after that date (the time at present remains unclear), although no one could blame him for what happened indeed wanted neither baby-sitter nor servant but rather felt that he was free to use her in any way use By partially acquitting the accused in the Kolkata High Court, and citing grounds such as a special agency of children and marital situation which stimulated debate about this branch family law. The apex court of India took *suomotu* under both POCSO⁷ and IPC⁸ and also under Article 142⁹ of its Constitution by focusing on systemic faults (and restoring some dignity to children who had been violated).

Facts

In this present case, the victim is a 14-year-old girl, who escaped from her house and eloped with a 25-year-old man, i.e., the accused. After her mother tried convincing her to return home. On 29th May the Victim's mother lodged a complaint and filed aniled a FIR. On 19th December, the accused was arreseted after an adversed delay by the investigating officers.

The accused committed 'Penetrative sexual intercourse' with the victim, and ultimately became pregnant and gave birth to a female child. As per the provisions of IPC, 1860¹⁰, such sexual assaults on a minor girl, with or without consent, attract the provisions of rape. Subsequently, the accused was held convicted by the Learned Judge of the District Court Bharatpur under Section 6 of the POCSO Act, 2012¹¹, and Section 363, 366, 376(2)(n)¹², 376(3) of the IPC, 1860. As per the conviction, the accused was sentenced to 20 years of imprisonment under section 6¹³ of the POCSO

Act and 4 and 5 years, respectively, for kidnapping and abduction under sections 363¹⁴ & 366¹⁵ of the IPC. No separate punishment was imposed for rape against a child under 18 years of age. But, 4 years later, in 2023, a Divisional bench of the Calcutta High Court heard the appeal and acquitted the accused of the charges under sections 363 and 366 of the IPC, as there was no

⁷ *ibid.*

⁸ Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

⁹ India Const. art. 142.

¹⁰ Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

¹¹ Protection of Children from Sexual Offences Act, No. 32, Acts of Parliament, 2012 (India).

¹² Indian Penal Code, § 376(2)(n), Act No. 45, Acts of Parliament, 1860 (India).

¹³ *Supra* Note. 14.

¹⁴ Indian Penal Code, § 363, Act No. 45, Acts of Parliament, 1860 (India).

¹⁵ Indian Penal Code, § 366, Act No. 45, Acts of Parliament, 1860 (India).

evidence to support these charges and held that the offence was not made out. The court made irrelevant statements and contended that it was a consensual non-exploitative sexual act arising in a romantic relationship. The court made a victim-shaming and stereotyping judgment in this case as to the young girls to control their sexual urges and maintain the duty to protect their bodily dignity. The court also stated that POCSO should be amended to exclude consensual relationships. using the powers of the High Court under Article 226¹⁶, read with Section 482¹⁷ of CRPC, the court quashed the FIR against the accused and acquitted him by setting aside the conviction.

After this controversial judgment was passed on 7th December 2023, the Supreme Court took *Suo Motu* out of the case, following the directions of the CJI, for the challenge.

Issue

1. What are the essentials in a judgment for an appeal against the order of conviction?
2. Can an offence tried under POCSO be termed a romantic relationship?
3. Whether the judgment may contain the personal opinion of judges in a particular case.
4. Whether the high court can exercise excessive powers to quash the conviction on grounds of settlement for heinous offences like rape.

Reasoning

The court's reasoning lay in the strict statutory mandate of POCSO; Under S.6¹⁸, it criminalises aggravated penetrative sexual assault, prescribing severe punishment irrespective of whether the minor ostensibly consented. The rationale is to protect adolescents who are deemed incapable of giving valid consent, as their age precludes informed decision-making. The Supreme Court underscored that the High Court's suggestion of adolescent choice diluted this protection, running contrary to legislative intent. The Indian Penal Code (IPC) supplements the framework under POCSO, particularly Sections 375¹⁹ and 376²⁰ are often invoked in

¹⁶ India Const. art. 226.

¹⁷ Code of Criminal Procedure, No. 2, § 482, Acts of Parliament, 1974 (India).

¹⁸ Protection of Children from Sexual Offences Act, No. 32, § 6, Acts of Parliament, 2012 (India).

¹⁹ Indian Penal Code, § 375, Act No. 45, Acts of Parliament, 1860 (India).

²⁰ Indian Penal Code, § 376, Act No. 45, Acts of Parliament, 1860 (India).

conjunction with POCSO.

These provisions criminalise sexual intercourse without consent, but when read with POCSO, the emphasis shifts to, that any sexual act with a minor automatically constitutes rape, irrespective of whether the minor appears to have consented. the harmonised reading of POCSO and IPC reinforces the absolute nature of child protection in India legal system. The JJ Act is further supplemented by the Juvenile Justice (Care and Protection of Children) Act, 2015. While POCSO is more oriented towards punitive aspects for the offenders, JJ Act deals more with care and protection of such children. Section 46 of the JJ Act prescribes that it is the responsibility of the state to ensure monetary and rehabilitative assistance required for each child who is discharged from a children's home or special home.

It also requires that restorative justice be applied in a victim-centric manner, emphasising the complete development and social reabsorption of the victims. POCSO and the JJ act together represent a two fold response: There is retributive justice on the offenders, but the victims are also protected from being marginalized and unsupported. While the statutory law is rigid, the constitutional framework introduces a nuance. Another important element was article 142²¹, as the court balanced competing considerations, the need to uphold statutory protections and deterrence, and the need to avoid compounding harm to the victim. The courts reliance on Article 142²² was carefully limited to extraordinary facts thereby avoiding doctrinal dilution, constitutional provisions not only reinforce these statutory protections but also guarantee equality before law, ensuring that minors are not discriminated against in seeking justice i.e. Art.14²³. In KS Puttuswamy case, the SC recognised privacy under Art.21²⁴ as a fundamental right, thereby strengthening the constitutional foundation for protecting minors against violations of their bodily integrity and decisional autonomy. The POCSO, the IPC, and the JJ Act together create a complete statutory protection for children, by striking a balance between punishment for offenders while at the same time ensuring rehabilitation of victims. Embedded within constitutional protection of equality, dignity and privacy, this framework protects the rights of children in principle and practice.

²¹ India Const. art. 142.

²² *ibid.*

²³ India Const. art. 14.

²⁴ India Const. art. 21.

Analysis

The SC analysis in the *Re: Right to Privacy of Adolescents* is layered balancing both the law and the main idea of the acts as it was reasonable to uphold the district court judgement. The hon'ble high court acting as a guardian of fundamental rights made parenthetical comments in its judgement and deviated from its duty to protect the POCSO victim.

At the outset, the court clarified that consent by a minor is legally immaterial under POCSO. The statutory framework stems from recognition of vulnerability children and adolescents under 18 are incapable of giving informed consent to sexual activity. The High Court of Calcutta (West Bengal) observation that the adolescent had chosen to live with the accused or expressed later acceptance was therefore unsustainable in law. The victim in question is now married to the alleged accused, has a child with him, and wants to keep the family. The incarceration of the husband would, in fact, punish the wife and further destabilize her life. Now, the Court was confronted with a legal paradox which is to give protection to the adolescent in whatever absolute terms she is legally entitled to. The matter brought the Article 142²⁵.

The Court exercised the extraordinary power to uphold the conviction but waive the sentencing thereon. The decision also pointed to the systemic failures. While the Court found that the trauma suffered by the victim was not only a direct consequence of the accused's actions but was largely a product of state neglect. The Defendants' failure to carry out timely protective measures envisaged under Section 19(6) of POCSO reflected on the Child Welfare Committee, which failed to ensure rehabilitation. And to add, the social stigma could only work towards her misery. Institutional failures augmented her miserable experience, rendering it a question of personal blame. Undeniably, the reliance on Article 142²⁶ by the Court is not without its controversies. It demonstrates judicial pragmatism by recognising extraordinary circumstances where inflexible punishment would do more damage than good, while at the same time, one can question whether this strips the legislation of its essence by softening a mandatory minimum. It requires the acknowledgement that the criminalisation of adolescent relationships described in POCSO is not a phenomenon that is completely absent in India. More and more

²⁵ India Const. art. 142.

²⁶ *Supra* Note. 30

of the courts are having to deal with the adolescent relationships that are consensual and, in reality, being held in violation of the law.

The law courts have chosen to be somewhat more lenient on the statutes by not having a law that imposes an absolute age of consent. The court does have the discretion to impose a punishment or sentence in a way that softens the blow of the punishment, in instances where a deep emotional connection exists. This decision is likely to, though the court has maintained silence on such matters, fuel discussion as to whether the age of consent under POCSO is in need of reform. Also, the decision placed a greater focus on rehabilitation and the notion of justice for the victims of the crime. The courts have already started the implementation of the policies that include the restorative approach to justice by integrating punishment with comprehensive support in the form of social, educational and financial assistance. The courts viewed the victim not as evidence, but as a rights holder, whose future and dignity needed to be protected, especially with the global policies and principles of child rights.

Conclusion and Suggestions

As a recent debate about the report of the Law Commission of India shows, the issue of consent continues to be one of the contested questions in child protection law. The commission suggested amendments to Sections 4 and 8 of the POCSO Act, special courts to impose lesser sentences for penetrative sexual assault if the girl is above sixteen and in an intimate relationship. I am completely against this recommendation. Such discretion risks legitimising exploitative conduct under the guise of consensual adolescent relations. Moreover, the EPW commentary focuses on how early pregnancies are due to inadequate sex education and lack of contraception access and not to adolescent sexuality per se.

This case shows why the strict protection of POCSO must stay strong. By restoring the conviction, the Supreme Court reinforced the idea that minors cannot give any legal consent to sexual intercourse. While doing so, the Court also acknowledged the realities of the situation. The Court acted under Article 142 and chose not to impose any extra punishment due to the victim's marriage and the fact that she has children. This balance between strict legal rules and fair justice is much better than reducing protective measures. The way the Court used judicial discretion is unique and noteworthy. The Court's move from focusing on punishment to prioritizing the victim is commendable because it holds the State accountable for the education, financial support, and rehabilitation of the victim. This approach should be improved, not

diminished.

Thus, the case provides a model for balancing protection and empathy. POCSO must maintain its strict safeguards. Systemic loopholes need to be closed, and adolescents should have access to information. Weakening legal protection, as suggested by the Law Commission, would put vulnerable adolescents at risk rather than protect them.