

22nd Law Commission Report Opposes Reducing Age Of Consent Under POCSO Act

Why In News

- The 22nd Law Commission advises against changing the minimum age of consent under the Pocso Act. Law Commission recommended the government not to tinker with the age of consent of 18 years, this age in India has varied widely over a period of time, from 10 years in 1860 to 16 years for females till 2012.



Point Of Debate

- The Case came amid a swirling debate over the **Age of consent under POCSO**. In the past few years, a number of high courts have expressed concern that consensual relationships between teenagers were getting criminalised under the stringent 2012 law meant to protect children from sexual violence.

**SHOULD THE AGE OF CONSENT BE
REVISED IN INDIA?**

What Does Report Said

- The 22nd Law Commission has advised the government **not to tinker with the existing minimum age of consent** under the Protection of Children from Sexual Offences (Pocso) Act.
- The panel in its report to the Union law ministry suggested introducing **guided judicial discretion** in the matter of sentencing in cases involving tacit approval of children in the **16-18 age bracket**.



22nd Law Commission Members

- **Justice Rituraj Awasthi** (Former Chief Justice of the Karnataka HC) was appointed as the chairperson of the 22nd Law Commission and **Justice KT Sankaran, Prof. (Dr.) Anand Paliwal, Prof. DP Verma** submitted report to the Union law ministry on the minimum age of consent under the POCSO Act.



POCSO Act

- POCSO Act came into effect on **14th November 2012** which was enacted in consequence to India's ratification of the UN Convention on the Rights of the Child in 1992.
- The aim of this special law is to address offences of sexual exploitation and sexual abuse of children, which were either not specifically defined or in adequately penalised.
- The Act defines a child as any person below the age of 18 years. The Act provides punishment as per the gravity of offence.
- The Act was further reviewed and **amended in 2019** to Introduce more stringent punishment including the **death penalty** for Committing sexual crimes on children, with a view to deter the perpetrators & prevent such crimes against children.



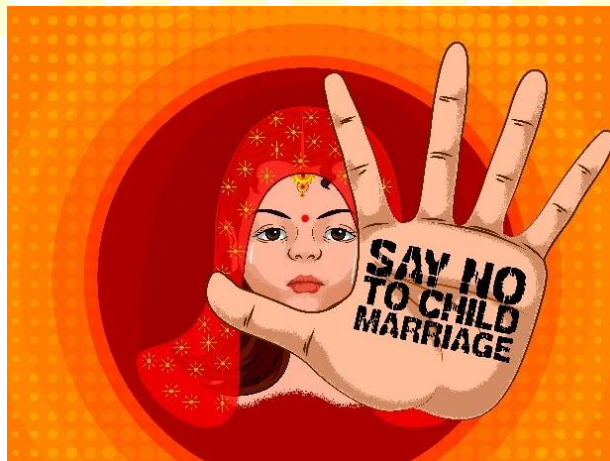
History Of Age Of Consent

- The age of consent defined for a woman by virtue of Section 375 of the IPC defining "rape", has had a chequered history with the age set at 10 years in 1860 to 18 years as it stands currently.
- In **1860**, the age of consent for females stood at **10 years**, the report said.
- Thereafter, **in 1891**, the age of consent for a woman was raised to **12 years** under Section 375 in the aftermath of the public outcry caused by the Phulmoni case.
- Prior to the POCSO Act in 2012, there was no age of consent defined separately for males and it was fixed by virtue of Section 375 of the IPC, which defines "rape". For females, the age of consent was 16 years till 2012.



Arguments

- It argued it would make it **easier for adults to have sex with minors**, even if the minors are willing participants.
- It would increase the **risk of child marriage and child trafficking**.
- It would make it more **difficult for authorities to investigate** and prosecute cases of child sexual abuse.



- If there is an automatic decriminalisation once the defence of consent is claimed, then it must be borne in mind that **consent is something that can always be manufactured**.
- Further, the police investigation suffers from a great number of inadequacies and if it is the investigating agencies that get to determine if there was consent or not, then a lot of genuine cases that need to be prosecuted under the POCSO Act may not see trial on account.

- Investigating agencies **themselves declaring** them to be cases of consensual romantic sexual relationship."



Suggestions

- It is not advisable to tinker with” the existing age of consent — 18 years — under the Protection of Children from Sexual Offences (POCSO) Act to exempt adolescent sexual acts from the purview of the criminal law.
- The Law Commission of India has instead favoured introducing “**guided judicial discretion** in the matter of sentencing” in cases involving those in the **16-18 age** group.

LAW COMMISSION REPORT 'AGE OF CONSENT UNDER POCSO ACT'

- It says “this will **ensure that the law is balanced**, thus safeguarding the best interests of the child”.
- The Commission has recommended **amendments to Sections 4 and 8** of the POCSO Act dealing with punishments for penetrative sexual assault and sexual assault.

- It has suggested that the **Special Court gives lesser sentences** in cases where the child is of the age 16 or above, subject to explicit consent.
- It also suggested making corresponding **changes in Sections 375 and 376 (rape) of the Indian Penal Code (IPC)**.



Section 375 & 376 Law
For Rape & Punishment
In India-2019

