

# CONSIDERING CONSENT: THE HINDU EDITORIAL ON POCSO ACT AND THE AGE OF CONSENT

Relevant for: Developmental Issues | Topic: Rights & Welfare of Children - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

As much as the laws of a country must adhere to the principle of justice and fairness, they also need to stay in tune with the times. It was this proviso that the Dharwad Bench of the High Court of Karnataka invoked as it [urged the Law Commission of India to have a rethink](#) on the criteria for [age of consent](#), 'taking into consideration the ground realities'. The judges said they were motivated to make this recommendation, having encountered several cases relating to minor girls over the age of 16 years (but below 18 years) having fallen in love and eloped with the boy, and wondered why the consent of the girl in a sexual relationship is not factored in, especially when [charges are made out under provisions of the POCSO Act](#). The Act was enacted to protect children from sexual abuse, and it raised the age of consent for sexual intercourse from 16 to 18 years. In practice, however, studies have noted that many cases booked under the Act in the adolescent group (16 years and above) have a romantic involvement, including eloping with the intention of getting married, consensually. In almost all instances, police cases are initiated by the parents of the minor girl who has eloped with the lover. Once the sexual act is confirmed, [the POCSO Act](#) is slapped on the boy, who may sometimes be a minor, or barely of legal age for marriage, and the consequences of being prosecuted for penetrative sexual assault are life altering, as they are meant to be. While the boys face criminal prosecution, the girls are also sent to government institutions when they protest parents' strong disapproval of the liaison. Activists have charged that this has the potential to wreck the lives of the youngsters involved, and entire families too are felled by this encounter with the law.

There is no doubt that children are vulnerable, and must be protected from forced attempts to sexually assault or groom them with an eye on exploitation. However, the realities of adolescent attraction and the ascertainment of consent, 16 years or above, must be considered pertinent to investigation and prosecution. The High Court judges also asked if it could be presumed that minors have knowledge of the applicable law. It may be remembered that the Justice J.S. Verma Committee on Amendments to Criminal Law also recommended that the age of consent be reduced to 16, and necessary amendments be made in the POCSO Act. The Law Commission must now train its guns on the actual implementation of the Act, and ensure the POCSO Act, stays true to its broad intent — the protection of children.

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