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Law Commission against lowering age of consent under POCSO Act

Panel advises introduction of “guided judicial discretion” while sentencing in cases that involve the tacit approval of children in the 16 to 18 years age bracket

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The government should not tinker with the age of consent — currently 18 years — under the [Protection of Children from Sexual Offences \(POCSO\) Act](#), the Law Commission said in a report made public on September 29. Instead, it advised the introduction of “guided judicial discretion” while sentencing in cases that involve the tacit approval of children in the 16 to 18 years age bracket.



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The 22nd Law Commission, headed by Justice (Retired) Ritu Raj Awasthi, submitted its report (no. 283) to the Law Ministry on September 27. It was posted on its website on September 29.

‘Tacit approval’

In the report, the Law panel noted that certain amendments would be required in the POCSO Act, 2012 to remedy the situation in cases involving tacit approval, though not consent under law, on the part of children aged between 16 and 18 years.

The panel said that reducing the age of consent would have a direct and negative bearing on the fight against child marriage and child trafficking; it also advised the courts to tread with caution even in cases related to “adolescent love”, where criminal intention may be missing.

In his covering letter to Law Minister Arjun Ram Meghwal, Justice Awasthi wrote, “...the Commission is of the measured view that it is not advisable to tinker with the existing age of consent under the POCSO Act”.

Statutory rape

The reference on the age of consent was made to the Law Commission on November 9, 2022 by the Karnataka High Court (Dharwad Bench), which asked the Commission “to rethink on the age criteria for consent, taking into consideration the rising number of cases relating to minor girls above the age of 16 years falling in love, eloping and having sexual intercourse with the boy”.

A similar reference was also made by the Madhya Pradesh High Court (Gwalior Bench) in April this year, where the Court noted that the enforcement of the POCSO Act, in its present form, “causes injustice in cases of statutory rape where *de facto* consent is present”.

Guided judicial discretion

Taking note of such judicial observations, the Commission noted that cases where there is tacit approval do not merit the same severity as “cases that were ideally imagined to fall under the POCSO Act”.

“The Commission, therefore, deems it fit to introduce guided judicial discretion in the matter of sentencing in such cases. This will ensure that the law is balanced, thus safeguarding the best interests of the child. Accordingly, this Report is being submitted for your kind perusal,” Justice Awasthi said in the letter.

Reporting crime in real time

On September 27, the Law Commission also submitted a report (no. 282) in which it recommended rolling out the registration of e-FIRs in a phased manner, beginning with offences that attract a jail term of up to three years.

The panel said that e-FIRs will tackle the persisting issue of delays in the registration of FIRs, and will allow citizens to report crimes in real time. “Due to the march of technology, means of communication have progressed in leaps and