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CAN POCSO ACT CASES BE QUASHED IF THE ACCUSED MARRIES THE VICTIM?

INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a landmark legislation that aims to protect children from sexual assault, sexual harassment and pornography. The Act defines a child as any person below the age of 18 years and provides for stringent punishments for the perpetrators of such offences.¹ The Act also recognizes that boys can be victims of sexual violence as well and is gender-neutral in its approach. The POCSO Act is a vital legal framework that protects the rights and well-being of children from sexual abuse. One of the key features of the POCSO Act is that it does not allow for the compounding or settlement of cases. This means that once a complaint is filed under the Act, the victim or the accused cannot withdraw the case or reach a compromise. The rationale behind this provision is to prevent the victimization of the child and to ensure that the offender is brought to justice.

However, a controversial question has arisen in legal discourse - can the cases under the POCSO Act be quashed if the accused marries the victim? This issue involves legal intricacies, ethical dilemmas, and societal norms, triggering discussions on the nexus of justice and matrimonial settlement.

THE LEGAL VALIDITY

The legal legitimacy of quashing POCSO Act cases through marriage depends on a fine balance between justice for the victim and the chance for rehabilitation of the accused. In some cases, courts have considered marriage as a factor for quashing, stressing the possibility of social

¹ <https://economictimes.indiatimes.com/news/india/cant-quash-pocso-act-offence-on-basis-of-matrimony-high-court/articleshow/94490072.cms>

reintegration. However, this approach has faced criticism for possibly diluting the seriousness of the crime and the purpose behind the POCSO Act.

ETHICAL DILEMMAS

It is situations where you face moral conflicts that challenge your personal values. They often involve choosing between two or more options, none of which is completely acceptable from an ethical perspective. Some people believe that marriage can help the perpetrator reform, but others question the morality of this idea. They argue that marrying the victim should not be a way to escape accountability, as it may maintain unequal power relations and ignore the fundamental problem of violation and harm. The ethical challenge of putting justice above social expectations of forgiveness complicates the debate.

SOCIETAL EXPECTATIONS

Apart from legal and ethical issues, society's norms also have a big influence. The idea of marrying the victim as a way of making amends may be based on cultural values, but it also raises doubts about whether such a method serves the survivor's best interests. Finding a middle ground between cultural respect and the need for real justice is a difficult task that courts and society as a whole have to deal with.

THE SUPREME COURT EXAMINATION.

The Supreme Court has agreed to examine this issue and decide whether cases of the POCSO Act can be quashed based on a compromise between the accused and the victim. The court has observed that this is a serious and sensitive matter that involves the rights and dignity of children and that the law should not be diluted or misused.²

Some of the arguments **in favour** of quashing the cases are:

1. The marriage or compromise reflects the consent and free will of the parties, and the court should respect their decision.³

² <https://www.lawinsider.in/news/sc-to-decide-whether-posco-cases-can-be-quashed-on-basis-of-compromise-between-parties>

³ <https://www.onmanorama.com/news/kerala/2023/09/28/kerala-high-court-quashes-pocso-proceedings-after-accused-victim-married.html>

2. The continuation of the criminal proceedings would cause more harm and hardship to the victim, who may face social stigma and ostracism.⁴
3. The quashing of the cases would promote the welfare and rehabilitation of the victim, who may otherwise suffer from psychological trauma and emotional distress.

Some of the arguments **against** quashing the cases are:

1. The marriage or compromise does not erase the gravity and nature of the offence, which is a crime against society and not just an individual.⁵
2. The marriage or compromise may be a result of coercion, pressure, or inducement by the accused or the families of the parties, and not a genuine expression of consent and free will.⁶
3. The quashing of the cases would send a wrong message and encourage the perpetrators of such crimes, who may exploit the vulnerability and innocence of the children.

RECENT INSTANCES

However, in recent times, there have been several instances where the High Courts have quashed the criminal proceedings under the POCSO Act on the ground that the accused has married the victim. This has raised serious concerns about the misuse of the inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure (CrPC) and the violation of the rights of the child. Section 482 of the CrPC empowers the High Courts to quash any criminal proceeding if it finds that it is an abuse of the process of the court or that it would secure the ends of justice. This power is discretionary and extraordinary and has to be exercised with great care and caution.

GUIDELINES BY SUPREME COURT.

The Supreme Court has laid down certain guidelines and principles for the exercise of this power in various judgments.

⁴ <https://www.newindianexpress.com/states/karnataka/2023/nov/21/hc-quashes-pocso-rape-case-after-victim-accused-agree-to-marry-fixes-one-month-deadline-2634934.html>

⁵ <https://economictimes.indiatimes.com/news/india/cant-quash-pocso-act-offence-on-basis-of-matrimony-high-court/articleshow/94490072.cms>

⁶ <https://www.newindianexpress.com/cities/delhi/2023/nov/10/accuseds-marriage-with-complainant-does-not-entail-quashing-of-fir-under-pocso-hc-2631888.html>

1. One of the principles is that the High Courts should not quash a criminal proceeding in cases involving heinous and serious offences or offences against the society. The Supreme Court has held that offences under the POCSO Act fall in this category and that the High Courts should not interfere with the investigation or trial of such cases.
2. Another principle is that the High Courts should not quash a criminal proceeding on the basis of a settlement or compromise between the parties, unless the offence is compoundable under the law. The Supreme Court has held that offences under the POCSO Act are not compoundable and that the consent of the victim or the accused is irrelevant for the purpose of quashing the case.
3. A third principle is that the High Courts should not quash a criminal proceeding on the ground that the accused has married the victim, unless the marriage is valid and legal. The Supreme Court has held that a marriage between the accused and the victim under the POCSO Act is not valid, as it is against the law and public policy. The Supreme Court has also held that such a marriage is a sham and a ploy to escape the clutches of the law and that it does not absolve the accused of his criminal liability.

CONCLUSION

Therefore, it is clear that the High Courts cannot quash the criminal proceedings under the POCSO Act on the ground that the accused has married the victim. Such a course of action would defeat the very object and purpose of the Act and would amount to a mockery of the law. It would also violate the rights and dignity of the child and would send a wrong message to society.

The POCSO Act is a progressive and child-friendly legislation that seeks to protect children from sexual offences and to ensure their best interest and welfare. The High Courts, as the guardians of the Constitution and the law, should uphold the spirit and intent of the Act and should not allow any dilution or deviation from its provisions. The High Courts should exercise their inherent powers under Section 482 of the CrPC judiciously and cautiously and should not quash the criminal proceedings under the POCSO Act on the ground that the accused has married the victim.