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News: ‘Minor Muslim girl can marry without consent on attaining puberty’

- A girl who has attained the age of puberty could marry without the consent of her parents and has the right to reside with her husband even when she was less than 18 years of age as per Mohammedan Law, the Delhi High Court has said.
- Justice Jasmeet Singh made the remarks while hearing a petition by a Muslim minor girl and a Muslim man who eloped to get married as per religious customs in Bihar.
- The court also insisted that Protection of Children from Sexual Offences (POCSO) Act won't be applicable to such offences.

Protection of Children from Sexual Offences (POCSO)

Act 2012

- Protection of Children from Sexual Offences (POCSO) Act **2012 was enacted to protect children from sexual offences.**
- POCSO is defined as **“An Act to protect children from offences of sexual assault, sexual harassment, and pornography and provide for the establishment of Special Courts for the trial of such offences and matters connected therewith or incidental thereto.”**

- The implementation of the Act is under the aegis of Ministry of Women and Child Development.
- The Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for the establishment of Special Courts for the trial of such offences and related matters and incidents.
- The Act was amended in 2019, to make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.

Provisions of POSCO Act

- The act mandates that investigation in the cases is to be completed in two months (from the date of registration of FIR) and trial in six months.
- The Act defines a child as any person below eighteen years of age. Thus the act is gender neutral.
- POCSO states a sexual assault is to be considered aggravated if – The abused child is mentally ill or, When the abuse is committed by a member of the armed forces or Security forces, or a public servant, or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital, whether Government or private.

- It prescribes rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and also fine as punishment for aggravated penetrative sexual assault.
- It also makes provisions for avoiding the re-victimization of the child at the hands of the judicial system.
- The Act also makes it mandatory to report such cases. It makes it the legal duty of a person aware of the offence to report the sexual abuse. In case he fails to do so, the person can be punished with six months imprisonment or a fine.
- It also prescribes punishment to the people who traffic children for sexual purposes.
- The Act also provides for punishment against false complaints or untrue information.
- The act was amended in 2019 to increase the minimum punishment from seven years to ten years. It further adds that if a person commits penetrative sexual assault on a child below the age of 16 years, he will be punishable with imprisonment between 20 years to life, with a fine.
- Aggravated penetrative sexual assault under POCSO Act, 2012 is the equivalent provision for aggravated rape.

- A person can be charged with this offence in certain aggravating circumstances, such as if the rape occurs within a relationship of trust or authority, or if it leads to pregnancy, among others.
- Under POCSO, **the consent of a person under the age of 18 is irrelevant**, regardless of the nature and circumstance of the sexual interaction, or the particulars of the person with whom it takes place. This means that **any sex with a minor is rape**.
- **Section 23 of the POCSO Act prohibits disclosure of the victim's identity** in any form of media, except when permitted by the special courts established under the act. A violation of this section can attract punishments under the act.