

SC Abortion Verdict: Reading Down Mandatory Reporting Under POCSO Is a Double-Edged Sword

Though the court said minors engaging in consensual sexual activity can ask registered medical practitioners not to report instances of pregnancy, this could have a disastrous effect on children facing sexual abuse.

In a [significant judgment](#), Justices D.Y. Chandrachud, A.S. Bopanna and J.B. Pardiwala of the Supreme Court declared that all women and girls are entitled to safe legal abortions and the law cannot distinguish between married and unmarried women. The judgment went a step further to clarify that rape includes rape within marriage. The verdict came on an appeal by a 25-year-old single woman [challenging the Delhi high court order](#) denying her permission to abort her pregnancy from a consensual relationship after her partner refused to marry her.

While it is a welcome judgment, much of the media coverage missed a crucial and controversial obiter dictum – a judge’s expression of opinion uttered in court or in a written judgement, but not essential to the decision and therefore not legally binding as a precedent. By the stroke of the pen, the SC has read down the mandatory reporting requirement under the Protection of Children from Sexual Offences (POCSO) Act. It held that a doctor need not disclose the name and identity of the minor girl while reporting to the police.

What does the law say on this point?

Rule 3B (b) of the Medical Termination of Pregnancy (MTP) Rules allows minors to seek abortion of pregnancy of the term 20-24 weeks.

Section 5A (1) of the MTP Act states that no registered medical practitioner (RMP) shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act – except to a person authorised by any law.

Section 19 of the POCSO Act makes it mandatory to report offences under the Act and failure to report can be punished with a maximum imprisonment of six months or with a fine or both under Section 21 of the Act.

The judgment has called for a harmonious reading of the MTP Act and the POCSO Act and held that an RMP – on request of the minor and the guardian, is exempt from disclosing the identity and other personal details of a minor in the information provided under Section 19 of the POCSO Act and any criminal proceedings which may follow from such reporting.

As per the judgment, such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under [Article 21](#) of the constitution.

The judges took note of the fact that the POCSO Act does not recognise consent in sexual activities for minors, but this does not prevent adolescents from engaging in consensual sexual activity and sometimes this leads to pregnancy.

“The taboos surrounding pre-marital sex prevent young adults from attempting to access contraceptives. Young girls who have discovered they are pregnant are hesitant to reveal this to their parents,” the verdict said.

The judges went on to observe that mandatory disclosure deters minors from approaching qualified doctors as they may not want to entangle themselves in the legal process. This can make them approach an unqualified doctor for an MTP and it could not possibly be the legislation’s intent to deprive minors of safe abortion, the court argued.

Can have disastrous implications

For us at Majlis, a team of women lawyers and social workers who provide legal and social support to women and children victims of sexual violence to help them navigate the complex legal terrain, this non-nuanced writing down of mandatory reporting for doctors will have disastrous implications on the ground.

The description of cases in the judgment will have us believe that all cases under the POCSO Act are 'love affair' cases where adolescents are engaging in consensual sexual relations. But the ground reality is less rosy and our data reveals a different story.

Between April 2021 and September 2022, we received 934 cases of sexual offences in Bombay. Of these, 83% (772 cases) were minors. The only reason these cases came to light is because of mandatory reporting. The Act puts the onus of reporting on every stakeholder – including NGOs, educators, health professionals, parents, neighbours and legal professionals who might be aware of such cases. Of the 772 cases, minors were pregnant at the time of reporting in over 19% (144) of the cases and the incident was detected at the hospital. There were many other cases where victims informed us they were pregnant at an earlier point during the continuous abuse but were forced to abort.

If we try to understand who were the accused in these cases, a sizable number are registered as 'promise to marry' – when the partner retracts his promise to marry the girl/woman and she is left holding the baby. But what is shocking is that 10% of the rapes were perpetrated by fathers, stepfathers and other close relatives.

Take the case of Pinki* [name changed], a 16-year-old with four younger siblings living in a slum. Pinki was frequently raped by her father. The sexual assault continued for over four years and over time, the incidents became more frequent. Pinki's mother was aware of the abuse but did not help. The case was detected when they visited the hospital after Pinki complained of abdominal pain. As soon as the doctor informed the mother that Pinki was pregnant, she refused to report the incident. Seeing her mother's reaction, even Pinky started crying and refused to report it.

Or the case of Fahima*, a 17-year-old school dropout who was in a consensual relationship with a 35-year-old man. When she found out she was pregnant, she was afraid to inform her parents. Her mother

suffers from schizophrenia and her father is absent most of the time. What she believed was love was, in fact, an abusive relationship. The incident came to light when she visited the hospital with her aunt. At the hospital, the aunt refused to report the incident and wanted to get the girl married. Fahima wanted the same.

Take the case of Sujata*, whose parents lived in the village while she and her two sisters lived in Mumbai with their grandmother. Sujata, just 14m was raped on multiple occasions by a *paanwala* who had a shop across their tenement. When the pregnancy was detected at Nair Hospital, the sisters were afraid to report the case. They feared that they would be forced to go back to the village and drop out of school.

Priya*, a 14-year-old, was raped by 59-year-old Pramukh in her *basti*. Her mother was terrified when it was discovered at a municipal hospital that Priya is 22 weeks pregnant. Being a single mother, she was afraid of the stigma and was scared to face the wrath of her elder son, who was extremely violent.

It is only because doctors are mandatorily required to report these incidents that these stories came to light. Mandatory reporting becomes especially important because of the proximity of the offender – who most of the time are fathers, cousins, uncles, brothers-in-law and neighbours. These cases involve continued abuse over a number of years and often go unreported. If other family members know about the abuse, they either remain silent or disbelieve the child or ask them to remain silent due to fear of social stigma and an unwillingness to implicate the accused.

Children do not have the resources to protect themselves. They are unable to remove themselves from the abusive situations and hence, they need adults to act on their behalf. Mandatory reporting acknowledges the prevalence and severity of child sexual abuse, and can be a means to prevent continuing violence. Along with mandatory reporting, we need to ensure effective intervention – good reporting practice, properly-resourced investigative and interventionist bodies; provide support at every stage – counselling, rehabilitation, preparing the child for court procedures; and addressing various problems that crop up along the way.

It is a fact that the criminal justice system is not child friendly. The legal process is long-drawn and draining. Victims have to relive the trauma and face social stigma. Families break up. In cases of family abuse, where the perpetrator is the breadwinner, there is the harsh reality of survival. At the end of it all, there is no guarantee that the accused will be convicted.

But just because the system is daunting, can we sweep these cases under the carpet? Is it not the duty of the government, the courts – especially the highest court in our country – to protect our children? If doctors did not have to disclose the name and identity of the minor girl while reporting to the police (on request of the minor and the guardian), all the cases cited in this article would never have been reported. By saying so, the Supreme court has snuffed out the hope of the most vulnerable and has encouraged the ‘conspiracy of silence’ around child sexual abuse.

At present, the POCSO Act does not differentiate between ‘genuinely consensual’ and other cases. There is an urgent need for a nuanced discussion on the criteria for such distinction and the authority that should make this decision. Giving this power to the police or doctors without any checks and balances can be disastrous and can take us many steps back. Perhaps an agency like the child welfare committee should be given these powers, with strict guidelines. But one thing is clear: whether mandatory reporting should be dropped or not requires a lot more discussion and nuanced understanding.

**All names have been changed to protect privacy.*

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