

EXPRESS OPINION

BECAUSE THE TRUTH INVOLVES US ALL

EDITORIALS

COLUMNS

SC using special powers to reverse POCSO verdict shows its moral responsibility

In a democracy governed by the rule of law, justice is not only about what is right, it is about who decides what is right, and how



The Supreme Court upheld a Special Court's judgment, reversing the High Court's decision, stating that consent is irrelevant in cases involving a minor victim.

June 3, 2025 03:14 PM IST

First published on: Jun 3, 2025 at 03:12 PM IST

<https://indianexpress.com/article/opinion/columns/sc-using-special-powers-to-reverse-pocso-verdict-shows-its-moral-responsibility-10045643/>

1/5

Written by Shashank Maheshwari

When Jesus of Nazareth stood before Pontius Pilate and declared that he came into the world to bear witness to the truth, the Roman governor responded with a question that still echoes through history: “What is truth?” Jesus did not reply. His mission, the silence suggests, was not to define abstract truth but to stand for justice — the justice envisioned in the Kingdom of God. He died for that justice.

In today’s constitutional context, when the Supreme Court invokes Article 142 of the Indian Constitution, the question is not merely, “What is the law?” but something deeper and more human: “What is justice?” Article 142 empowers the Court to deliver what the statutes sometimes cannot: “complete justice.” It is not a routine remedy but a moral trust, invoked when our shared sense of fairness is offended — and this tension was at the centre of the Court’s recent ruling in *In Re: Right to Privacy of Adolescents* (2025).

Also Read | In interpreting POCSO law rigidly, the Madras High Court has undermined the agency of youngsters

This is a case where the victim was not only abandoned by her family but also neglected by the State and failed by delayed legal action. The case dates back to 2018, when a 14-year-old girl ran away to the house of the accused, who was 25 at the time. The victim’s mother filed an FIR and requested the accused to bring her daughter back. The girl returned home a week later, only to go back to the accused’s house a year after and begin cohabiting with him. She was completely abandoned by her family thereafter.

During this period of cohabitation, a baby girl was born. After a delayed investigation, the accused was arrested under Section 6 of the Protection of Children from Sexual Offences Act, 2012, for committing “aggravated penetrative sexual assault” and under Sections 376(2)(n) and 376(2)(i) of the Indian Penal Code — for repeatedly raping the same woman and for raping a

woman under 16 years of age, respectively. He was also charged with kidnapping under the Indian Penal Code.

The Special Court under [POCSO](#) sentenced him to 20 years of imprisonment for sexual assault, along with five years for kidnapping. When the case reached the Calcutta High Court, it reversed the conviction, holding that both the victim and the accused were in a “consensual romantic relationship” and that their actions constituted “non-exploitative sexual acts.” The High Court also made objectionable remarks, directing female adolescents to control their sexual urges, along with similar directions to boys and girls — prompting the Supreme Court to initiate *suo motu* proceedings in the matter.

The Supreme Court ultimately upheld the Special Court’s judgment, reversing the High Court’s decision, and emphasised that consent is irrelevant in cases involving a minor. A committee was appointed to assess the victim’s socio-economic situation. Its report revealed her emotional trauma, financial exploitation, and the debt she incurred while supporting the accused. Invoking Article 142, the Court exempted the accused from further punishment to avoid inflicting additional harm on the victim. However, the Court clarified that this ruling is not to be treated as a precedent.

Article 142(1) of the Constitution empowers the Supreme Court to pass any order necessary to do complete justice in any pending matter. No other constitution in the world grants such broad discretionary powers to its highest court, except for Bangladesh (Article 104) and Nepal (Article 88(2)).

The interpretation of “complete justice” under Article 142 has evolved significantly — from a restrained approach in *Prem Chand Garg* (1963), where the Court held it could not override statutes, to a more expansive use in the 1990s. In *Union Carbide* (1991) and [Delhi Judicial](#)

Service Association (1991), the Court used Article 142 to bridge legal and executive gaps. Later, in *Vishakha* (1997), it issued binding guidelines in the absence of legislation. While such interventions helped address urgent injustices, they have also drawn criticism for bypassing constitutional limits.

MOST READ

- 1 **Bihar's got bijli, sadak and pani now, but it's still missing foundation for prosperity**
- 2 **J K Rowling-Emma Watson row reveals tension between lived truth and fiction's sweep**
- 3 **Yogendra Yadav writes: Let's audit Bihar SIR. It makes for sad reading**
- 4 **Behind the country's literacy milestones lies a spirit of volunteerism**
- 5 **More Indians are studying abroad every year. But not everyone has access to that dream**

In the recent POCSO case, the Court acted out of deep concern for the victim's dignity and future. Yet it also stepped into executive territory — prescribing care plans, financial support, and directing state-level compliance. These are responsibilities typically expected of welfare departments or social services. Even when done with noble intent, such judicial action can disrupt the delicate balance of powers that underpins constitutional governance.

The Supreme Court's intervention in this case was emotionally resonant and morally grounded. But the ruling serves as a reminder that Article 142 is not a blank cheque for good intentions. It is a delicate instrument, one that must be used sparingly — precisely because it enables the judiciary to operate outside statutory bounds.

Though the Court explicitly stated that this case shall not be used as precedent, that does not mean similar decisions cannot be made in the future, even without relying on this ruling. This case should also serve as a caution: even justice must pause to reflect on its limits. In a

democracy governed by the rule of law, justice is not only about what is right — it is about who decides what is right, and how.

The writer teaches at Jindal global law school

© The Indian Express Pvt Ltd



Child Sexual Assault

POCSO

POCSO Act