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EVOLUTION AND LEGAL FRAMEWORK OF POCSO AND CONSENT LAW IN INDIA

Vaibhavi Pandey¹

I. ABSTRACT

The evolution of child protection laws in India reflects a gradual shift from a fragmented criminal law approach to a specialised statutory framework designed to safeguard children from sexual offences. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) constitutes a significant legislative development in this regard, as it establishes comprehensive substantive and procedural protections and adopts a strict liability model under which the consent of any person below eighteen years of age is legally irrelevant. This research examines the legal framework of the POCSO Act and analyses its interaction with the law relating to consent under Indian criminal law. The study is doctrinal and analytical in nature and is based on an examination of statutory provisions, judicial decisions of the Supreme Court and various High Courts, Law Commission Reports, and relevant academic literature. The paper finds that although the POCSO Act has substantially strengthened child protection, its rigid age-based framework has also led to the criminalisation of consensual adolescent relationships, commonly described as the “Romeo and Juliet” problem. The absence of a close-in-age exemption fails to distinguish exploitative conduct from voluntary relationships between adolescents and may result in disproportionate penal consequences. The paper recommends the introduction of a statutory proximity-of-age exception, along with judicial guidelines, counselling mechanisms, and awareness programmes to ensure that the law continues to protect children while respecting adolescent autonomy and the realities of teenage relationships.

II. KEYWORDS

Age of Consent, Child Protection, Consensual Adolescent Relationships, POCSO Act, Strict Liability.

¹ 10th Semester, Student at Amity Law School, Amity University, Noida (India). Email: vaibhavipandey6183@gmail.com

III. INTRODUCTION

The legal system regulating child sexual offences in India has seen significant changes from a fragmented criminal law approach to a specialized child protection legal system. Prior to the Protection of Children from Sexual Offences Act, 2012² (POCSO), the concept of child sexual abuse did not constitute a distinct area of law. Child sexual offenses were, therefore, considered using the same law as that of adults under the Indian Penal Code, 1860 /Bharatiya Nyaya Sanhita, 2023. However, this approach was flawed in its inability to acknowledge the unique position of the child and the special nature of the sexual offenses committed on him/her. The main provisions that were relied upon prior to the enactment of the POCSO Act were Sections 354, 375, 376 and 377 of the Indian Penal Code, 1860, corresponding broadly to Sections 74, 63, 64 and 140 of the Bharatiya Nyaya Sanhita, 2023.³

However, these provisions suffered from several limitations in effectively addressing child sexual abuse. The first problem related to the definition of rape as contained under Section 375 IPC/Section 63 BNS⁴, 2023. The definition was too narrow since it only allowed for penile-vaginal penetration. This made other abuses like oral, anal, and object sexual abuse to be left out of the definition. When an abuse would be committed but it did not meet the definition of rape as set out by Section 375 IPC/63 BNS, 2023⁵, the charge would then be outraging modesty as provided for under Section 354 IPC, section 74, BNS, 2023.⁶

Child protection laws in India are in many respects connected to age-of-consent laws. In accordance with the original Indian Penal Code, 1860/Bharatiya Nyaya Sanhita, 2023, the age of consent was set at ten years old. However, this law faced harsh criticisms following the *Phulmoni Dasi case*.⁷ It revealed the loopholes in the then existing law and sparked off discussions in the society regarding child marriages and sexual protection of girls in their tender ages. Therefore, in order to address the

² The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)

³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 74, 63, 64, 140.

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ *Empress v. Hari Mohan Maiti* (1890) ILR 18 Cal 49

problem, The Age of Consent Act, 1891⁸ was brought into existence wherein the age of consent was increased to twelve years. It was indeed a significant legislation for the then age-of-consent jurisprudence in India.

A. Research Objectives

1. To study the evolution of child protection and consent laws in India.
2. To study the legal regime of Protection of Children from Sexual Offences Act, 2012, and its interaction with consent law in India.
3. To study the doctrine of consent within the criminal law of India, especially when it comes to children and teenagers.
4. To study the effects of mandatory reporting, age of consent, and statutory presumptions within the POCSO Act.

B. Research Questions

1. Does the strict liability framework under the Protection of Children from Sexual Offences Act, 2012 disproportionately criminalise consensual adolescent relationships?
2. What are the shortcomings of the current age-of-consent regime when applied to adolescent sexual behaviour?
3. How has the Indian judiciary addressed the tension between statutory child protection and adolescent autonomy?
4. To what extent do provisions relating to mandatory reporting and statutory presumptions under the POCSO Act affect the treatment of consensual relationships between adolescents?

C. Research Methodology

The current study is of doctrinal and analytical character. In other words, the research will be carried out mostly through analysis of academic and legal literature without conducting any field surveys. It is expected that the study will make use of academic and legal sources to analyse the development of legal provisions for Protection of Children from Sexual Offences Act, 2012 and consent law in India. Statutory

⁸ The Age of Consent Act, 1891 (Act X of 1891)

provisions, constitutional provisions, decisions of the Supreme Court of India and various High Courts, Law Commission Reports, and international agreements and conventions concerning the issues of child rights and consent will constitute primary sources of the research. Books, journal articles, research papers, legal commentaries, reports, and academic web databases will form secondary sources.

D. Literature Review

1. **Anchan, Janardhana and Kommu (2021):** They are of the opinion that sexual intimacy in adolescence is an intrinsic part of psychic and emotional development and that under POCSO the criminalization of consensual sexual intimacy creates a clash between the development and the state duty. They characterize it as a "tug of war" between the adolescent development and legal control.
2. **Prem Vinod Parwani (2023c):** She criticises the fixed age consent model under POCSO, advocating a competence-based model instead. He feels that all individuals under the age of eighteen under the present law are treated identically, unable to consent regardless of variations in development, knowledge and emotional maturity, and queries the validity of a presumption of incapacity based solely upon age.
3. **Justice J.S. Verma Committee Report (2013):** It examines the revisiting criminal law reforms, proposed not to raise the age for consensual relationships above 16 as it is inappropriate to use criminal law in the area of consensual teenage sexuality. This is a significant argument in academic discourse, as it was rejected by Parliament.
4. **Raha and Ramakrishnan (2025):** They Examine the over-criminalisation under POCSO and argue that its blanket approach disregards the social reality of adolescent relationships. Their work suggests that the absence of differentiation between exploitative abuse and consensual intimacy undermines the legitimacy of the law.
5. **Hartman (2000):** In his paper talks about the developmental approach in the case of children and adolescent is evident in Hartman (2000) regarding adolescent autonomy in decision-making. While the work is not specific to

India, it is essential theoretical foundation to analyse adolescent consent in India.

IV. LEGISLATIVE BACKGROUND OF POCSO

The legislative enactment of the Protection of Children from Sexual Offences Act (POCSO) essentially came about as a direct and necessary legal response to the widely recognized and, quite frankly, obvious inadequacy of the Indian Penal Code, 1860 when it came to effectively dealing with cases of child sexual abuse. It is important to note that the Parliament basically acknowledged and recognized that the existing, old-school criminal law framework was largely incomplete, patchy, and just incapable of properly addressing the, frankly, quite wide range of sexual offences being committed against children, which is a serious issue.

The, so to speak, Statement of Objects and Reasons of the POCSO Act clearly and unequivocally records that, you know, child sexual abuse had unfortunately become a, to put it mildly, serious social concern and that a, well, specialized and dedicated law was absolutely required to handle it. This entire Act is, for all practical purposes, enacted to establish what one would refer to as a full-fledged statutory regime, encompassing substantive crimes, numerous procedural protections, special evidentiary presumptions, and also adjudication processes specific to this Act. In turn, it introduced, which constituted an important innovation at the time, gender-neutral definitions of the aforementioned crimes and protected all children from exploitation, regardless of their gender, which constituted a significant shift from previous legislation in terms of scope and coverage.

One quite noteworthy element in the entire history of legislation can be seen in the form of the original POCSO Bill, which dates back to 2011.⁹ This first draft Bill, in fact, included a rather significant clause dealing with, specifically, adolescents aged sixteen to eighteen. This essentially meant that the Court had the power to evaluate the case to determine whether the, say, consent had been, in actuality, obtained using certain coercive tactics such as force, threat of force, fraud,, maybe, undue influence, and,

⁹ Deepika Paira and B. Venugopal, "Autonomy Paradox in India's POCSO Regime: Criminalization of Consensual Adolescent Relationships" 3 International Journal of Legal Studies 28 (2026).

perhaps, even though the means of being intoxicated. In other words, this clearly illustrates that there was an acknowledgement of the possibility of, let's say, consensual sexual relations among adolescents. India had ratified the UN Convention on the Rights of the Child (CRC) on 11 December 1992¹⁰. According to the CRC, it is the responsibility of States Parties to protect children from abuse and exploitation. In accordance with CRC, a child is defined as anyone under the age of eighteen. It was therefore important for POCSO to adhere to that definition.

A. Objectives And Purpose of POCSO

1. The main goal of the Protection of Children from Sexual Offences (POCSO) Act is to provide strong legal protection for children against sexual offences. This law focuses on the needs of children in a way that is effective. Unlike the older IPC/BNS, 2023 framework, which dealt with child sexual abuse in an indirect way, the POCSO Act introduces a new child-centred protective structure. This is a significant step forward.
2. Then, taking a step further, the second main objective of this whole endeavour is procedural protection. The legislature recognized that child victims need a very sensitive legal process. This is why POCSO provides specific, child-friendly procedures during the investigation and the trial itself. These measures aim to prevent children from reliving their trauma.
3. Then we have, like, the third objective which is pretty much deterrence, and this is, like, though, you know, significantly, like, stricter and tougher, punishment provisions and, you know, evidentiary presumptions.
4. The POCSO, basically, has taken a, like, totally victim-centric, you know, approach, to be honest, which means that, like, it totally, and completely, prioritises the, you know, child's dignity, and, of course, their privacy, and also there, personal, and mental, psychological well-being, to be sure, basically.

¹⁰ United Nations Convention on the Rights of the Child, 1989 (ratified by India on December 11, 1992).

B. Salient Features Of POCSO

POCSO provides a comprehensive statutory regime relating to sexual offences against children.

1. **Child (Section 2(d)):** Section 2(d) defines a child as any person under eighteen years. This is the basic provision, because the age is the determining factor for the application of the whole Act. The law applies a strict age-based test. It does not differentiate on the basis of maturity or voluntariness. This rigid framework directly leads to legal conflict in consensual adolescent relationship cases.¹¹
2. **Penetrative Sexual Assault (Section 3):** Section 3 broadly defines penetrative sexual assault and goes beyond the former rape framework under IPC. Includes Penetration by the penis, objects and oral sexual acts.¹²
3. **Punishment (Section 4):** After the amendments in the Criminal Law (Amendment) Act, 2019, where the child is under sixteen years of age, the punishment will be imprisonment of not less than twenty years but may extend to imprisonment for the rest of their natural life, and also with a fine. Where the child is aged between sixteen to eighteen years, punishment is imprisonment of not less than ten years but may extend to life imprisonment. These amendments indicate the legislative decision to enhance punishment.¹³
4. **Aggravated Penetrative Sexual Assault (Section 5) and Punishment (Section 6):** Section 5¹⁴ creates aggravated types, such as offences committed by police officers, relatives, teachers, and persons in authority. And Section 6¹⁵ provides for punishment of not less than twenty years, extending to life imprisonment. This provision intends to impose enhanced punishment for the violation of trust and authority.

¹¹ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s. 2(d).

¹² The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s. 3.

¹³ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s. 4.

¹⁴ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.5.

¹⁵ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.6.

5. **Sexual Assault (Section 7) and Punishment (Section 8):** Section 7¹⁶ criminalises any sexual touch without penetration and, Section 8¹⁷ prescribes punishment between three to five years.
6. **Aggravated Sexual Assault (Section 9) and Punishment (Section 10):** Aggressed sexual assault is defined in section 9¹⁸ and, Section 10¹⁹ prescribes punishment between five to seven years.
7. **Sexual Harassment (Sections 11-12):** Sexual harassment is defined in Section 11.²⁰ In the section 12²¹ the punishment goes up to 3 years.
8. **Child Pornography (Sections 13-15):** These provisions make child pornography and exploitative use of children as criminal offenses. Section 14²² provides a maximum sentence of five years (first time) and seven years (second time) imprisonment. Age-based liability is a highly characteristic feature of POCSO that has a tight liability framework. When the victim is less than eighteen years, the consent would become irrelevant.²³
9. **Presumption (Sections 29 and 30):** In section 29, there is a statutory presumption against the accused. Section 30 introduces presumption as far as culpable mental state is concerned. Such provisions enhance prosecution. In the consensual adolescent cases, however, these presumptions may increase criminal responsibility even in cases where the willingness was based on factual basis.²⁴

V. MANDATORY REPORTING

Among the most peculiarities of the Protection of children against sexual offences Act, 2012 is the system of mandatory reporting as it is a significant change in the common criminal law. In contrast to most criminal offences where reporting is often left to be

¹⁶ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.7

¹⁷ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.8.

¹⁸ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.8.

¹⁹ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.10.

²⁰ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.11

²¹ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.12.

²² The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.14.

²³ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.13 and s15.

²⁴ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.29 and s30.

done by the victim(s) or family, POCSO imposes a statutory obligation on any person to report acts of child sexual offence. The legislative conceptualization is child sexual abuse consistently stays conspicuous due to the fear or shame or the emotional pressure or the family control or the failure by the child to fully comprehend or to disclose the abuse. In this realisation, the legislature went proactive as the onus of reporting was not left to fall on the child alone. This is the legal background of the compulsory reporting in *Section 19* of POCSO.²⁵

This clause provides that any individual who knows that an offence under the Act has been committed, or he even has an apprehension that an offence has been committed under the Act, must report the same to the Special Juvenile Police Unit (SJPU) or to the police station. The language of the provision is purposely general. It does not restrict this requirement to parents or guardians. Rather, it spills over to teachers, doctors, school authorities, neighbours, relatives, counsellors and any other individuals who will be considered aware of the offence.²⁶

*Section 21*²⁷ of the Bill, which follows the initial clause, is the punishment of non-reports. Anyone who neglects to report an offence is likely to be punished either with imprisonment of up to six months, fine or both. In the case of the head of an institution failing, he can be fined as well as up to one year of imprisonment. This punishment aspect renders reporting a legal obligation and not a moral choice. This extreme measure is meant to prevent protection. An early reporting would help to avoid recurrence of abuse, conserve evidence, and offer immediate help to the child. It also makes the institutions more responsible particularly in schools, hospitals and child-care environments.

VI. SPECIAL COURTS

One of the institutional features of the POCSO Act is the establishment of Special Courts for the trial of offences under the Act. While these courts are designed to provide child-friendly and expeditious justice, they are also required to adjudicate

²⁵ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.19.

²⁶ Alok Prasanna Kumar, "Mandatory Reporting under POCSO" 57 Economic and Political Weekly 12 (2022).

²⁷ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s.21.

cases involving consensual adolescent relationships, thereby applying the full criminal process to situations that several High Courts have regarded as raising significant concerns of proportionality and fairness. The legislature realised that normal criminal courts can be very conducive to delays, formal procedures and intimidating environment in general that can be very harmful to the environment of the child victims. To deal with this, POCSO proposed a specialised judicial system to ensure a swift and child-sensible justice system. This legal rationale behind Special Courts is found on the basis of the Special Courts in the form of Section 28²⁸ of POCSO to the effect that Sessions Court shall be designated by the State Government as a Special Court, in order to conduct the trials on the offences under the Act.

The rationale of this offering is to establish a courtroom with a specific set of tools that could normally be found only within large juries. The Special Courts have been necessitated by the understanding that child victims need a different treatment as compared to their adult counterparts. Children might be afraid, confusion, trauma, and problem with narrating events. The formalities of a traditional courtroom setting, cross-examination, and its aggressive tone may have more severe psychological consequences. Special Courts are intended to minimise this harm.

The principle of child-friendly trial procedure is one of the most significant characteristics of Special Courts. According to POCSO, the Special Court should make sure that the child does not keep being called upon to testify. The Court should also establish a mood that makes the child feel safe and secure as he or she gives evidence. The Act also allows in-camera proceedings, that is, the trial is carried out in secret and without exposing the trial to publicity. This is a significant protection since the social stigma and emotional distress inflicted on the child by the public proceedings is quite significant. Confidentiality of identity is another protection that is important. The identity of the child is not allowed to be published in media and official records. This protection guarantees privacy and social dignity.

A victim-based judicial philosophy is indicated by the creation of Special Courts. It understands justice goes beyond conviction to making sure that even the legal process

²⁸ The Protection of Children from Sexual Offences Act, 2012, 2012 (Act 32 of 2012), s 28.

itself becomes a harm source. But where the relationships between adolescents are consensual, the Special Court process can be applied with all the criminal implications. In these areas where the relationship is voluntary, the adolescent parties can still be lured into a criminal trial model which is designed to exploit abuse cases. This also casts crucial issues concerning proportionality and the proper use of the law. Special Courts under POCSO are therefore a significant institutional change in child protection law but are still legally ambiguous in their application in consensual adolescent cases.

VII. STRICT LIABILITY UNDER POCSO

POCSO has many unique aspects among them the concept of strict liability. Unlike other criminal legislation where issues of consent play an important role, in the case of POCSO, the age alone is taken into consideration, and as soon as the child is found below eighteen, the issue of consent does not arise at all. So, the law assumes anyone that young simply can't give valid consent to a sexual act. Even if a child says yes, or seems to agree, the law doesn't recognize it. Consent just isn't valid here. The reasoning for POCSO is that it protects children because children are vulnerable to blackmail and abuse. The motive behind this is very simple, and there is no need for prosecution to establish that the child struggled. It all comes down to two factors: age and sex. The stringent nature of the Act has been further enhanced by the provisions made in Section 29, where a statutory presumption against the accused has been established. In case a person is charged with an offence relating to POCSO, it will be presumed by the Court that he/she has committed the offence unless proved otherwise.

Section 29 does not adhere to the normal principles of criminal law, wherein the prosecution must prove the guilt of the offender beyond any reasonable doubt through a statutory presumption against him/her. In a similar way, *Section 30*²⁹ has provided for the presumption of culpable mental state. Together, *sections 29*³⁰ and *30* provide a strong framework for prosecution. The Supreme Court of India, while

²⁹Supra Note 26, s.30

³⁰Supra Note 26, s. 29

considering the case *Independent Thought v. Union of India* (2017)³¹ emphasized the importance of child-protection standards by declaring that having sex with a young bride below the age of eighteen constitutes rape. The Supreme Court of India emphasized that social practices cannot supersede the child-protection laws; this ruling enhances the effectiveness of the strict liability standard.

VIII. CONCEPT OF CONSENT UNDER CRIMINAL LAW: POSITION UNDER INDIAN PENAL CODE, 186(BHARATIYA NYAYA SANHITA, 2023) AND POCSO, 2012

Consent plays an essential role in criminal law, especially in sexual crimes and crimes involving bodily autonomy. By definition, consent is defined as a conscious, knowledgeable and voluntary agreement to be part of a specific activity. Whether or not consent exists in the act is often crucial when it comes to criminal cases. The law acknowledges that every person has bodily autonomy and that any form of physical intimacy not accompanied by consent infringes on this autonomy. This concept of bodily autonomy is the cornerstone of all sexual offenses. Consent, in the eyes of the law, cannot simply be equated with willingness. It must be voluntary, free from fear, force, coercion, fraud, deception, or misconception of fact. A person may appear willing in fact, but if that willingness is obtained through unlawful influence or without full understanding of the act, the law does not recognise it as valid consent. Therefore, criminal law treats consent as both a factual and legal concept.³²

Consent forms the very basis of the definition of rape within the Indian Penal Code, which was enacted in 1860 (Bharatiya Nyaya Sanhita, 2023). In section 375³³ of the IPC, defines rape to include sexual intercourse without the woman's consent or against her will, as well as cases where consent is obtained through fear, coercion, fraud, or misconception of fact, or where the woman is incapable of understanding the nature and consequences of the act. Hence, it has always been crucial to establish a lack of

³¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

³² Shreya Shrivastava, "Adolescents' Sexual Choices & the POCSO Act", Vidhi Centre for Legal Policy, available at: <https://vidhilegalpolicy.in/blog/adolescents-sexual-choices-the-pocso-act/> (last visited on May 5, 2026).

³³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 63.

genuine consent in proving cases of rape. Prior to the passage of the Protection of Children from Sexual Offences Act, 2012 and the later amendments to the criminal laws in 2013, the age of consent was sixteen years for Section 375 IPC/section 63 BNS, 2023³⁴. Therefore, any sexual relationship between an individual above sixteen years old would not necessarily result in criminal sanctions, on the condition that the consent was both authentic and voluntary. This was a paradigm shift in legal philosophy. While the IPC/BNS, 2023 model had retained the principle of consent, subject to the condition of age, in the POCSO, the very factor of age had become crucial. If the individual in question was below the age of eighteen years, the issue of consent did not arise at all. It did not matter whether the affair was voluntary, loving, or romantic; it was considered an offence under the law. This position was further reinforced by the Criminal Law (Amendment) Act, 2013, which substituted Section 375 of the Indian Penal Code and raised the age of consent from sixteen to eighteen years. In other words, the IPC/BNS and POCSO models were brought on par with each other as far as the age criterion for child sexual offences was concerned.

IX. EVOLUTION OF AGE OF CONSENT IN INDIA

Age of consent in India has not been a fixed concept; rather, it has gone through several phases as legislations based on the socio-political context of their time. It can be seen from the legal history of age of consent that the conception about childhood and sexual vulnerability on part of the State has undergone several transformations through time. This transformation is crucial to understand as the current regime of the law of age of consent can only be fully comprehended through its historical background. Early laws may be found in the Indian Penal Code, 1860/BNS, 2023, where age of consent is stated to be 10 years in Section 375.

Laws enacted during such a time took into account the social reality of that era when there were cases of child marriage in which girls got married off at an early age. Hence, laws were formulated in such a manner as to respect social traditions rather than

³⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s. 375 (as it stood prior to the Criminal Law (Amendment) Act, 2013).

question them. The very setting of the age limit of 10 years shows that the perception of childhood during those times was very narrow.

Firstly, the *Age of Consent Act, 1891* is an important piece of legislation that led to a number of reforms. The age of consent act was not introduced without cause. It was a reaction to the infamous case of *Phulmoni Dasi*³⁵, in which a girl of eleven years old died after she was forcefully engaged in sexual intercourse while she was married. The issue generated great debate and highlighted the inability of the law to protect minors even when they were in marital relations.

The change increased the age from ten to twelve years. The reforms brought about in 1891 reflected the involvement of the social reform movement in the making of criminal law. It is important to note that the reform movement was already criticizing certain social customs like child marriages and emphasizing on the need for protection of young girls. The other major legislation which emerged during the early twentieth century concerned the age of consent being raised to fourteen years. This rise in the age of consent can be attributed to changes in social views about childhood and the expansion of educational opportunities.

It became clear that there were longer periods in which children would have to be protected before they could be considered as legally competent adults. The concept of safeguarding also had implications on the issue of child marriage. With this in mind, the *Child Marriage Restraint Act of 1929*³⁶, more commonly referred to as the Sarda Act, became the law. This act focused on trying to protect the interests of young girl children who were getting married without their consent.

In 1925, the Indian Penal Code was amended to raise the age of consent from twelve to fourteen years, reflecting a further expansion of legal protection for minors. In the post-independence period, the Indian Penal Code (Amendment) Act, 1949 raised the age of consent for rape to sixteen years. This remained the legal position for several decades and constituted the most enduring age threshold under Indian criminal law. During this period, the law consistently treated sixteen years as the benchmark for

³⁵ *Empress v. Hari Mohan Maiti*, (1890) ILR 18 Cal 49

³⁶ The Child Marriage Restraint Act, 1929 (Act 19 of 1929)

determining the legal validity of consent in sexual offences.³⁷ However, the recent development in this area can be attributed to the enactment of Protection of Children from Sexual Offences Act, 2012, which marked a departure from the existing legislative measures, as it introduced a completely new legislative framework that was specifically formulated keeping child protection laws in mind. The law modified the age limit of childhood, fixing it at eighteen years of age. This was later incorporated in IPC/BNS, 2023 through Criminal Law (Amendment) Act, 2013³⁸ by amending the rape law to bring it in line with child protection laws. Therefore, it is evident that the history of age of consent in India shows a gradual increase in the age limits, starting from ten years, then twelve years, fourteen years, sixteen years, and eventually eighteen years.

In fact, this current debate about the relations among adolescents under POCSO is just another step on the way within this very long journey through history. This age of consent legislation has been changing dynamically, showing the constant fight between the aspects of protection, reality, and lawmaking. The choice made in the form of adopting eighteen years as the threshold age for legal purposes in the POCSO Act, 2012, was no technical decision made in legislative terms.

Moreover, in such cases, the girl often turns out to be an accomplice of the accused or withdraws her allegations of forceful conduct. It is especially evident for inter-caste and inter-community relations. Family objections against the choice made by the adolescent girl led to registering of FIRs against the girl alleging kidnapping and rape, whereas the relationship was purely consensual. In this sense, criminal law serves only as an instrument for maintaining family honour. This brings us to the question of proportionality, which is another related issue. Post the 2019³⁹ amendment to POCSO, the punishments have become much more severe in nature. Minimum punishments for cases of penetrative sexual assault can now be up to ten years, while for aggravated forms it can be up to twenty years or even life imprisonment. In other

³⁷ PMF IAS, "Age of Consent in India", available at: <https://www.pmfias.com/age-of-consent-in-india/> (last visited on May 5, 2026).

³⁸ The Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

³⁹ PMF IAS, "Age of Consent in India", available at: <https://www.pmfias.com/age-of-consent-in-india/> (last visited on May 5, 2026).

words, normal consensual adolescent behaviour, when prosecuted under a strict interpretation of statutes, would attract punishment meant for sexual assaults.

In this regard, the concept of Romeo Juliet Clause deserves some attention. The Romeo Juliet Clause, which exists in many jurisdictions around the world, allows for certain exemptions where two people, who are close in age and have a consensual relationship, are involved. It is not intended to legalize the exploitation of children; rather, its objective is to avoid any prosecution where normal adolescent behaviour is concerned. The rationale behind this is quite obvious. Presently, Indian law has no provisions to make this exception. The lack of a close-in-age exception results in all cases being subject to the rigid statutory law, irrespective of whether there is a small age gap between the two individuals.

One of the most prominent criticisms raised regarding POCSO's current framework has been in regard to this aspect. Judicial responses to the application of the POCSO Act in consensual adolescent relationships have revealed growing concern regarding the disproportionate consequences of the statute's strict liability framework. In *Sabari v. Inspector of Police, the Madras High Court* acquitted the accused in a consensual relationship involving a seventeen-year-old and expressly urged Parliament to reconsider whether the statutory definition of "child" should extend uniformly to all persons below eighteen years. In *Anoop v. State of Kerala*, the Kerala High Court observed that the present legal framework does not adequately distinguish between exploitative sexual offences and relationships arising from adolescent affection.

Similarly, in *Atul Mishra v. State of U.P.*, the Allahabad High Court noted that the rigour of the POCSO Act should not be applied mechanically to consensual teenage relationships. These decisions indicate a developing judicial recognition that the statute may operate harshly in certain factual situations. However, these are decisions of High Courts, and the Supreme Court of India has not yet delivered a definitive ruling resolving the tension between statutory child protection and adolescent autonomy.

X. JUDICIAL RESPONSES TO CONSENSUAL ADOLESCENT RELATIONSHIPS UNDER POCSO

Indian High Courts have increasingly acknowledged the difficulties arising from the application of the POCSO Act to consensual relationships between adolescents. In *Sabari v. Inspector of Police*, the Court emphasised that criminal law should not be used to punish normal adolescent behaviour and recommended legislative reconsideration of the age threshold. In *Anoop v. State of Kerala*, the Court highlighted the absence of any statutory distinction between genuine sexual assault and consensual romantic relationships involving adolescents. In *Atul Mishra v. State of U.P.*, the Court observed that rigid enforcement may lead to unjust outcomes where there is no allegation of coercion or exploitation. Collectively, these judgments reflect an emerging judicial concern regarding over-criminalisation, although the issue remains unsettled at the national level because the Supreme Court of India has not yet conclusively addressed the matter.

XI. RECOMMENDATIONS

- 1. Include a Proximity of Age Exemption:** An exception for proximity of ages in Indian laws will allow the prevention of criminalization of any relationship between adolescents in close proximity of age such as between 16 and 18 years old. It will ensure that the normal conduct of teenagers does not amount to any offence, and at the same time it will ensure strict punishment if there is any element of exploitation involved.
- 2. Distinguish Exploitation from Normal Behavior:** Any criminalized approach for handling such issues does not account for the behavior of adolescents and more importantly can easily be misused under pressure from family or society.
- 3. Adopting the Views and Intentions of Adolescents into Judicial Processes:** It is important that courts take into account the perspective and intentions of adolescents in such cases. Considering their growing maturity level and listening to what they have to say can contribute significantly to the achievement of justice.

4. **Setting Out Guidelines for Police and Judiciary:** There is a need for guidelines which can assist policemen and judiciary members when dealing with cases of adolescent relationships. This can help avoid unnecessary arrests and prevent abuse of laws as well as ensure that only genuine cases of violence are taken to court.
5. **Encouraging Sex Education Programs:** The introduction of age-appropriate sex education in schools can greatly benefit adolescents. This helps them realize the importance of mutual consent in any romantic relationship and distinguish between a normal situation and abuse.
6. **Encourage Awareness Among Families and Communities:** Most cases under POCSO emerge because of the disapproval of parents rather than any wrong committed by the adolescents. The awareness campaigns need to be carried out to sensitize the families and community regarding adolescent psychology and the distinction between consensual relations and abuse.
7. **Counselling Services Should Be Made Available:** There should be provisions for counselling the adolescents and their families when such events take place. Mediation and psychological support could solve many issues more constructively.

XII. CONCLUSION

As over the years, the age of consent has now changed from 10 under the IPC/BNS to 18 years under POCSO which has drastically shifted in the society and ideas about the childhood. But right now, the laws lump every case into single category. It doesn't really fit into the reality of adolescence, a phase which is full of psychological growth, maturity and the search for independence. That's where the real question pops up about fairness and proportionality. People have been raising issues and major institutions like the Law commission of India and the courts have started to admit that a more nuanced approach to teenage relationships is needed.

Most of us agree that the age limit should not drop below 18 to keep the children safe, but most of the folks are saying that the law needs room for context as it can differentiate between the abuse and protections; it's about making awareness and

making sure that the law can tell the difference and respond fairly. To wrap up this, the POCSO Act is crucial for protecting children and ensuring sexual offences are handled with the seriousness they deserve but, also law should be there to make a balance between clear laws, judicial discretion, and real social awareness. So, reforms need to create awareness that protect kids while respecting the complicated nature of adolescent relationships today.

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