

THE GREY AREA OF CONSENT: JUDICIAL INCONSISTENCY AND ADOLESCENT RIGHTS UNDER THE POCSO ACT

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Abstract

India's Protection of Children from Sexual Offences Act (POCSO), 2012, while designed to protect minors from sexual exploitation has created significant legal and social complications regarding consensual teenage relationships. This research paper addresses critical gaps in its implementation, and analyses how courts have developed inconsistent approach, while dealing with issue of consent in romantic relationships involving adolescents. This leads to some courts rigidly applying the age-based rule, while other courts, take into consideration circumstances of the case. The study identifies serious conflict between mandatory reporting provision under POCSO and adolescents' access to reproductive health services. This research paper examines how POCSO's implementation conflicts with international children's rights standards, particularly the Convention on the Rights of the Child principle of evolving capacities. The study proposes comprehensive reforms including abolishing mandatory sentencing for consensual relationships, implementing evidence-based sex education, and coordinating policy frameworks to balance protection with recognition of adolescent's developing autonomy and fundamental rights.

Keywords: adolescent sexuality, age of consent, judicial interpretation, children's rights, POCSO Act

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Introduction

The use of criminal law as a tool to control teenage sexual relationships raises socio-political issues. As teenagers mature toward adulthood, it becomes challenging to balance granting them personal autonomy with protecting them from potentially harmful activities, including those they willingly chose to participate in. Thus, anyone who tries to solve this dilemma often finds himself entangled between two perspectives on the one hand are child rights advocates, who argue for expanding the teenagers decision-making power and call for a complete reconsideration of how society regulates adolescent sexuality (Hartman, 2000). Similarly criminal law scholars oppose the idea of criminalizing behaviour based purely on moral considerations.

On the other hand, policymakers are hesitant to decriminalize consensual sex between teenagers because they fear that by decriminalizing, they might be appearing to approve of teenage sexuality (Beinen, 1998). Policymakers also worry that by giving adolescents adult level decision making authority over sexual matters might invite further complications. The logical progression, they argue, would be granting teenagers control over their health care decisions (such as abortion), right to choose their own religion regardless of their parent's views.

This scholarly gap is present in the Indian context, where the Protection of Children from Sexual Offences Act (hereinafter referred as POCSO) (POCSO, 2012) was enacted to address the Indian Penal Code's inadequacy in curbing sexual abuse. The already existing criminal law statutes were not dealing adequately with the sexual exploitation and abuse of children. This led to the enactment of POCSO Act. By defining any person under 18 years as a "child" (POCSO, 2012 § 2(d)), POCSO creates a "fix age" consent rule that criminalizes all sexual interactions involving minors without exception, regardless of circumstances or voluntariness. This approach has resulted in legal ambiguity regarding the validity of minor's consent, with conflicting judicial interpretations leading to problematic outcomes. While already existing literature has addressed the POCSO's over criminalization (Raha & Ramakrishnan, 2025) of even consensual sexual relationships and its impact on young adults' autonomy (CCL-NLSIU, 2025), it fails to provide a legal framework that protects minors from exploitation while recognizing their evolving capacity for meaningful consent. This paper critiques this critical gap

in POCSO by analysing, how courts have interpreted consent under POCSO and the undesirable consequences of these inconsistent approaches.

The Age of Consent

The historical evolution of India's age of consent laws shows a shift from colonial patriarchal control to modern over criminalization of adolescent sexuality. The age of consent has undergone multiple revisions since colonial times, beginning at 10 years (GOI, 2029) in the Indian Penal Code, 1860. The tragic death of 10-year-old *Phulmoni Dossee* (Queen-Empress vs Hurree Mohun Mythee, 1891) after forced marital consummation by her 35 years old husband led to the first major reform, raising the age of consent from 10 to 12 years (Ghosh, 2014). The husband was held guilty only for causing grievous hurt by doing a rash or negligent act dangerous to life and was sentenced to one-year rigorous imprisonment. Thereafter age of consent was raised from 12 years to 14 years in 1925, from 14 years to 16 years in 1940 and finally to 18 years in in the POCSO Act, 2012 (283rd LCR, 2023).

The 2012 POCSO Act marked a watershed moment by adopting United Nation Convention on the Rights of Child's (CRC, 1989) definition of childhood as 18 years. This created an absolute barrier where all sexual activity involving anyone under 18 became criminal, termed as "statutory rape" regardless of consent or context. The National Commission for Protection of Child Rights (NCPCR), prepared the Protection of Children from Sexual Offences Bill in 2010, wherein, it recognized the possibility of consensual romantic relationship between two children. The said bill had an exception, according to which, *any consensual non penetrative sexual act penalized by this chapter (except for sections 23, 25, 27 and 31), is not an offence, when engaged in between two children, who are both over 12 years of age, or are either of same age or whose ages are within 2 years of each other*, with similar protection for those over 14 years, within a 3 year age gap (283rd LCR, 2023).

The original 2011 Bill had the legislative awareness of this issue, it included a proviso to that effect in section 3 and 7 of the proposed 2011 bill, for consensual sexual relationships between 16-18 years old children. It required the courts to examine, whether consent was obtained against the will of the child, or, consent has been obtained by use of violence, force, threat to use force, intoxicants, drug, impersonation, fraud, deceit, coercion, undue influence, threat, when the

child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it (283rd LCR, 2023). The Ministry of Women and Child Development supported this proviso and argued that law cannot ignore social realities and criminalizing adolescent would be only counterproductive (Department-related Parliamentary Standing Committee on Human Resource Development, 2011). However, the parliamentary standing committee recommended removal of these exceptions. The committee argued that, once a child is defined as any person below 18 years, the element of consent becomes irrelevant (283rd LCR, 2023). By allowing such a provision in POCSO, would only shift the entire trial process central to the conduct of victim rather than accused. This decision to not include the proposed proviso, which acknowledged the possibility of consensual romantic relationship among adolescents, went on to prioritise the procedural protection of child rather than recognition of adolescent normal development.

The current legal framework has its own paradoxes. The Criminal Law (Amendment) Act and the subsequent 283rd report of law commission have shaped and reinforced India's rigid approach to adolescent sexuality, and it indicates both legislative overreach and institutional resistance to reform. The Criminal Law (Amendment) Act, 2013, increased the age of consent for sexual intercourse from 16 to 18 years creating complete alignment between section 375 of IPC and the POCSO Act. This brought a unified but problematic rule, where any sexual activity irrespective of presence of consent with a woman below age of 18 years constitutes statutory rape. This amendment, enacted in response to the Delhi gang rape case, extended protective framework beyond its intended scope, criminalizing consensual adolescent relationship that pose no exploitative risk. The act created internal contradictions, particularly exception 2 to section 375 of the IPC according to which, the age of consent as 15 years (for married couples), due to which there was a huge gap of 3 years in the age of consent for a married girl versus an unmarried girl.

The Justice J. S. Verma Committee, in its report in 2013, proposed to lower the age of consent in POCSO, from 18 to 16 years, in line with section 375 of IPC. The committee argued that, UNCRC aimed to protect children from sexual abuse and exploitation, and not to criminalise the normal adolescent behaviour (283RD LCR, 2023). However, these proposals were ignored and age of consent was increased to 18 years in IPC.

The 283rd law commission report of 2023, acknowledged the stakeholder's concern and judicial discomfort with criminalizing consensual teenage relationships, still it recommended retaining the 18-year age of consent. Three possible solutions were before the law commission, first, being the lowering of age of consent from 18 years to 16 years, second being the inclusion of an exception clause in provision of POCSO, thereby decriminalizing cases involving romantic relationship among adolescents and last being that some judicial discretion should be given to courts while dealing with cases of such nature (283rd LCR, 2023). The commission found the third solution, most appropriate for the current scenario. The commission recommended inclusions of subsection in sections 4 and 8 of the POCSO Act, to make it more compliant while dealing with cases of such nature (283rd LCR, 2023). The commission considered it necessary that the POCSO Act needed amendments to address cases involving 16-18-year-olds where there is practical agreement but no legal consent. The report recommended that consensual sexual activities in this age group should not be treated with the same harshness as typical POCSO cases.

More recently, the new Bhartiya Nyaya Sanhita has retained the marital rape exception under section 63, while continuing to treat sexual activity differently based on the marital status rather than consent or the harm caused (The Bharatiya Nyaya Sanhita, 2023). It shows that despite claims of “decolonizing” the criminal law, the Bharatiya Nyaya Sanhita has failed to decolonise India's rape laws. This legislative trajectory is a pattern where lawmakers acknowledge the problems of over-criminalization but lack the political will to implement meaningful reform. This results in a legal system, that criminalizes normal adolescent development and maintains archaic exceptions based on marital status.

Judiciary's Take on Consensual Romantic Relationships Involving Adolescents

The judicial interpretation of India's POCSO Act has created a problematic “grey area” regarding consent involving minors and it has resulted in inconsistent legal outcomes undermine the law's coherent application. The judiciary has applied two fundamentally different approaches, while interpreting consent under POCSO. The first approach is formalistic and rigid and based on strict reading of provisions, wherein the courts apply the fixed age rule without considering individual circumstances, capacity or voluntariness (Parwani, 2023). Courts following this approach automatically criminalize sexual activity

involving minors regardless of apparent consent, recognizing POCSO as overriding legislation that supersedes even personal laws that permit marriages between minors. This approach assumes that minor under 18 categorically lack the mental capacity to understand the consequences of sexual acts (Parwani, 2023). The landmark case of *Independent Thought vs Union of India*, which primarily dealt with marital rape, the court dealt with the case of whether sexual intercourse, with a 15- 18-year-old married girl should be criminalised or not. The court held that *children's minds are not fully developed to fully comprehend the consequences of such actions*, and therefore it would amount to violation under POCSO Act (*Independent Thought vs UOI*).

In contrast the second judicial approach is more circumstantial and context based, with courts attempting to recognize minor's capacity for meaningful consent within certain situations (Parwani, 2023). These courts consider factors such as voluntary relationships, particularly those leading to marriage, and acknowledge "biosocial dynamics" in young-adult relationships. They show reluctance to criminalize acts that lack "overriding public interest" concerns or are deemed "purely individual in nature." In the case of *R Parthiben vs State*, this approach was taken, where a court declined to apply POCSO provisions to a consensual relationship between a 24-year-old man and 17-year-old woman who later got married, noting the absence of coercion and recognised the voluntary nature of relationship. Again, the Calcutta High Court in *Ranjit Rajbanshi vs State of West Bengal*, questioned the arbitrary nature of age -based consent, and raised the critical question, of how consent is irrelevant, when the girl is 17 years and 364 days, but on 17 years and 365 days, she is capable of giving consent.

Further, Karnataka High Court's decision in *State of Karnataka vs Basavraj s/o Yellapa Madar*, shows the judicial discomfort with POCSO's inability to distinguish between exploitation and normal adolescent behaviour. The court observed that, many cases involve teenagers, who are closely related to each other or are very well known to each other (being classmates), who engage in sexual activity, without knowing the applicability of the POCSO Act. The court noted that, while lack of knowledge of law is no excuse, can minors be presumed to have knowledge of the applicable law, when such relations only stem from natural adolescent behaviour rather than predatory intent.

In *State vs Suman Dass*, the judge took a controversial approach by interpreting "penetrative sexual assault" through the lens of the Indian Penal

Code's definition of assault, focusing on the element of force rather than consent. The court acquitted the accused, reasoning that "if they are happy about it, why put obstacles on their path... the girl child knew what she was doing" and finding that the physical relationship was not "in the nature of assault or consequent to use of any criminal force." The judge argued that POCSO aims to prevent acts that harm mental and physical health, freedom, and dignity, but rejected the interpretation that it criminalizes all adolescent sexual activity. The court held that "law cannot and should not prohibit teens from experimentation of such nature," arguing that criminalizing such conduct would essentially make "the human body of every individual under 18 years of age the property of State" and deny minors "the pleasures associated with one's body." The Delhi High Court subsequently upheld this judgment, effectively legitimizing a framework that prioritizes individual autonomy over POCSO's age-based protections.

The Bombay High Court's ruling in *Ashik Ramjan Ansari vs State of Maharashtra* is a significant development from the rigid age-based consent laws under India's POCSO Act. In this case, a 25-year-old man was convicted for engaging in romantic relationship with a 17-year-old girl who was merely 5 months away from turning 18. The court acquitted the appellant and noted that the evidence in present case is sufficient to show that, there was consensual sexual relationship between the accused and the victim. The court made a distinction between chronological age and actual capacity to consent and noted that the girl child had clear understanding of consequences of her actions, and not once did she try to run away from the company of accused during their elopement period. Even she had already addressed two letters to the police station to make it clear that the nature of their relationship was consensual and there was no force or inducement of any kind. Her unshakable stand on the consensual nature of their relationship was proved again and again at every stage of this case. The court observed that criminalizing such relationships due to victim's minority status without taking into consideration the voluntary nature of such relationship would result in young man carrying "a severe dent, which he'll have to carry lifelong."

This judicial difficulty with capacity assessment is not unique to contemporary India. Historical analysis of British age of consent cases from 1918-1950 reveals that how courts struggled with objective capacity determinations, often applying gender and class biases that assumed working-

class girls possessed sexual maturity while denying boys any capacity for consent in homosexual encounters (Lammasniemi, 2024). This historical pattern is an example of how protective legal frameworks frequently serve social control rather than genuine welfare, a tendency that persists in POCSO's inconsistent judicial application today.

The Supreme Court's decision in *In Re: Right to Privacy of Adolescents* shows the judicial contradictions present in POCSO's application. The case involved a consensual relationship that resulted in marriage and childbirth, where the victim clearly stated that relationship was consensual and she had married "out of her own volition." The Calcutta High Court reversed the trial court's conviction for rape and kidnapping under the POCSO Act, with a rigorous imprisonment of 20 years. The High Court made problematic comments that consensual sex among adolescent's was due to "peer pressure, influence by social media, free availability of porn materials and free mixing with friends of opposite sex" and imposed a "duty/obligation for every female adolescent" to protect their dignity, integrity and "control" their sexual urges. This is an example of how POCSO becomes a tool for moral policing rather than child protection.

The Supreme Court took suo moto cognizance of the case, described these comments as "objectionable" and restored the conviction, clarifying that "consent is not an exception to rape under the POCSO Act." However, it simultaneously used Article 142 powers to exempt the convict from mandatory 20-year imprisonment.

The Court's expert committee's finding that, "it was not the legal crime, but the subsequent legal battle that traumatised the victim." The report mentioned that, the victim had spent over 2 lac rupees in defending her husband, she had fallen into debt, suffered more from the criminal justice process than from the original incident, which she never perceived as victimization. In this particular case, the society, the family of the victim and the legal system failed her. The court observed that, the victim could not make an informed choice due to shortcomings of our society, our legal system and her family, at the age of 14, and further imprisoning her husband would now cause her greater harm than protection. However, court went on to say that, this decision should not be treated as a precedent, and rather it is an illustration of the complete failure of our society and our legal system, and to prevent further revictimization of the victim, the accused was spared from the 20-year imprisonment.

Consent to sexual intercourse is seen as the most fundamental element of personal autonomy (Pandey, 2022). However, under POCSO act, all sexual activity involving minors is penalized. From the above discussion of various judicial decisions dealing with consensual romantic relationship involving minors, it is clear that, there is no uniform rule, that is applied in such cases, and thereby this over criminalization process results in further revictimization of the victim as well as accused.

Impact of Criminalization on Adolescent's Rights

The POCSO Act in India, while intended to safeguard children from sexual exploitation, has resulted in many unintended consequences that undermine the fundamental rights of adolescents and burden the justice system. The Act's blanket criminalization of all sexual activity involving person under 18 years, regardless of consent or context, conflicts with established understanding of adolescent development and creates a troubling disconnect between legal framework and biological reality.

India has a dubious distinction of two criminal law statutes, which speak different languages for same set of stakeholders, i.e., children. On the one hand is the POCSO Act, which assumes a child as asexual. On the other hand, is the Juvenile Justice (Care and Protection of Children), Act, 2015, under which, a child, may be tried as an adult for a heinous crime of rape (The Juvenile Justice (Care & Protection of Children) Act, 2015 § 15 & 18(3)). While one assumes complete agency of the child and may require him to be tried as an adult, the other statute completely negates his/her agency and refuses to recognise consent.

This approach violates adolescent dignity and privacy rights. Sexual behaviour among adolescent, particularly from onset of puberty, is widely recognized by developmental psychologists as natural, normative and integral to the transition into adulthood. However, POCSO's approach equates consensual, age-appropriate relationships with serious crimes like rape and penetrative sexual assault, criminalizing normal developmental behaviour. The Kerala High Court in *Anoop vs State of Kerala* observed that the statute fails to distinguish between "conservative concepts of rape and sexual interactions arising out of pure affection and biological changes," and criticized the law for not contemplating "the biological inquisitiveness of adolescence."

In a landmark decision in *Teddy Bear Clinic for Abused Children vs Minister of Justice and Constitutional Development*, the constitutional court of South Africa, held that, criminalizing consensual sexual activity between adolescents, violates their dignity even if such laws are rarely enforced. The court observed that, when society fails to respect consensual sexual choices and rather criminalizes such acts, it inevitably diminishes young people's innate sense of self worth and subjects a state of disgrace on adolescents, only because of their normal developmental behaviour. In Indian context, POCSO Act, by criminalizing all sexual activity between adolescents, regardless of consent of circumstances, negates the right of adolescents to make personal choices, it renders adolescent girls voiceless and it has become rather a tool for harassment in hands of parents and society, who disapprove of such normal adolescent behaviour. The children who engage in such consensual act, face harassment and mental trauma, only because they fell in love. POCSO act, by criminalizing all sexual interaction below 18 years, fails to distinguish between sexual exploitation and abuse of children and normal adolescent behaviour.

The Act's implementation has led to widespread deprivation of liberty, particularly affecting young males who find themselves charged with non-bailable offenses for consensual relationships. Statistical analysis reveals that in 15.2% of romantic cases, accused individuals remain in judicial custody throughout the trial period, with some spending extensive periods incarcerated before trial. The case of *Rama @ Bande Rama vs State* is an example of this injustice, where a 20-year-old spent 18 months in judicial custody for a consensual relationship, leading the Karnataka High Court to observe that the criminal process itself inflicted pain and that "the sword of crime would have torn the soul of the accused." The 2019 amendments have worsened this situation by increasing minimum sentences to 20 years for cases involving repeated consensual sex or resulting pregnancy, creating disproportionately harsh penalties for what is fundamentally normal human behaviour.

The implementation of POCSO, in cases involving two minors, creates a legal dilemma, especially in its interaction with the best interest principle (CRC, 1989, Art. 3). This principle states that, in all actions concerning children, best interest of child shall be a primary consideration. However, the implementation of POCSO Act, in consensual romantic relationship between two minors, leads to problematic gender bias. In cases involving romantic relationship between

two minors, POCSO's default stance is, to categorize the male as accused and the female as victim. It completely fails to take account of cases, wherein, there is a possibility of mutual consent, or, in some cases, there may be female initiation, or coercion. Such a rigid approach, not only promotes harmful gender stereotypes, but also criminalizes the very individuals the law aims to protect. Adolescent girls are cast as "victims" without agency, denying their autonomy to make relationship choices or express their sexuality. When these girls refuse to return to their families and insist on staying with their partners, they are institutionalized in Children's Homes, often remaining there even after reaching the age of majority due to administrative confusion between court and Child Welfare Committee jurisdictions. Meanwhile, adolescent boys face discriminatory treatment as "children in conflict with the law" and may even be tried as adults, creating a system that victimizes both parties while claiming to protect them. Perhaps most concerning is how the Act has become a tool for enforcing social control rather than protecting children from genuine abuse.

Statistical analysis show that 80.2% of romantic cases in POCSO are filed by parents or relative of the girl child, after finding out about, elopement or her pregnancy. This pattern shows that POCSO has become a tool to enforce patriarchal control over adolescent sexuality, to target inter caste and inter faith relationships (CCL-NLSIU, 2017).

The criminalization approach undermines the best interest principle and evolving autonomy concepts that should guide adolescent policy. Rather than striking a balance between protection and recognition of developing capacity, POCSO lumps all persons under 18 together without consideration for their sexual development or individual circumstances.

One of the most damaging consequences of this criminalization is its severe impact on adolescents' access to sexual and reproductive health services. Despite policy initiatives like the Rashtriya Kishor Swasthya Karyakram (hereinafter referred as RKSK) that aim to provide confidential, barrier-free health services to adolescents, POCSO's mandatory reporting requirements (POCSO, 2012, § 19) create insurmountable obstacles. Healthcare providers become reluctant to serve adolescents due to fear of triggering criminal proceedings, with WHO reviews revealing that service providers are "inclined to deny SRH services to young people in some states." This creates a hostile environment where

adolescents cannot access essential health services, contraception, or safe abortion services, inadvertently pushing them toward unsafe alternatives. Evidence shows that abortion-related death rates are highest among 15-19-year-olds in India, partly due to these access barriers that force young women toward dangerous procedures.

This healthcare crisis directly conflicts with India's Adolescent Reproductive and Sexual Health (ARSH) program, launched in 2005 under WHO guidelines to provide reproductive health services to adolescents. The ARSH policy was built on confidentiality, creating safe spaces where adolescents could access healthcare without fear of legal consequences. However, POCSO's mandatory reporting provisions have changed healthcare providers from confidential counsellors into potential initiators of criminal cases.

The Supreme Court has attempted to address some of these healthcare access issues in *X vs Principal Secretary, Health & Family Welfare Department*, gave guidelines to ensure that unmarried and single women, including adolescents, are not deprived of access to safe abortions. The court exempted the *Registered Medical Practitioner from disclosing identity of the victim, who has approached the medical practitioner for termination of pregnancy, at the request of minor and her guardian*. However, this limited exception does not address the systemic barriers, and cases where adolescents wish to continue pregnancies will still trigger mandatory reporting, perpetuating the fundamental conflict between health access and criminalization.

The Prohibition of Child Marriage Act, as noble as it seems in its goal, is a weak law. It does not automatically declare a child marriage void but only voidable (PCMA, 2006, § 3) and while there are penal provisions against solemnising such marriages, the law is silent on the issue of sexual relations with a minor spouse. The POCSO Act, on the other hand, criminalises all sexual activity among adolescents. Now this becomes a paradoxical situation, where a practice not automatically void under one law, leads to criminal liability under another.

The broader impact on India's justice system has been substantial, with courts overwhelmed by cases that involve consensual relationships rather than genuine child abuse. This misallocation of judicial resources diverts attention and funding from cases involving actual predatory behaviour and child exploitation. The administrative confusion between different legal systems -

criminal courts, Child Welfare Committees, and family courts - has created prolonged detention periods and unclear jurisdictional boundaries that further harm the young people the system claims to protect.

Convention on The Rights of The Child and Adolescent Rights

The Convention on the Rights of Child, 1989 (hereinafter refereed as CRC), recognizes principles about evolving decision-making capacity of children. It requires countries to recognize that parents, family members and guardians have the responsibility to guide and direct children, but this guidance must adapt to the child's evolving capacity (CRC, 1989, art. 5). CRC was the first legal document that for the first time talked about participation rights of children. It requires states to ensure that children who can form opinions have the right to express their views in matters directly affecting them and their views must be given weightage according to child's age and maturity level (CRC, 1989, art. 12). Together, these articles create a system that recognize child's agency and decision-making abilities as they mature.

The United Nations Committee on the rights of child, in 2014, in its concluding observation to India, welcomed India's adoption of POCSO in 2012, as strengthening protection against sexual exploitation and abuse of children (UN Committee on Rights of Child, 2014). The committee expressed its concern over inadequate protection of boys and intersex children, from sexual abuse and exploitation (UN Committee on Rights of Child, 2014). It called for a need for a prevention strategy that, incorporate key actions, to address protection of all children. More importantly, it stressed on the fact that child protection measures must ensure that adolescents have access to confidential medical counselling without parental consent, regardless of their age.

The United Nations Committee on Rights of Child, in its general comment no. 20, urged the states to maintain a balance between children from sexual abuse and exploitation, and respect for their evolving capacity (Committee on the Rights of Child, 2016). It recommended that, states should avoid criminalizing "factually consensual and non-exploitative sexual activity" between adolescents of similar ages. The Comment take into consideration, that adolescents occupy a special position and thus require distinct consideration, so approaches for realizing adolescents' rights differ from those for younger children. It characterizes adolescence as inherently a positive developmental stage during

which States must introduce measures to help adolescents explore their evolving sexualities in healthy, supported ways. The Comment requires States to introduce legislation to recognize adolescents' right to take responsibility for decisions affecting their lives, ensuring that age limits for various rights remain consistent with protection requirements, best interest principles, and respect for evolving capacities, particularly regarding healthcare decisions.

Further, in 2019's General Comment No. 24, the CRC recommended removing status offenses that criminalize consensual sexual acts between adolescents, and stressed on the need for age-appropriate policies that protect rights while acknowledging adolescents' evolving capacities (Committee on the Rights of Child, 2019).

Regarding age of consent specifically, the General Comments establish that States must balance protection with evolving capacities and should avoid criminalizing adolescents of similar ages for consensual, non-exploitative sexual acts. General Comment 4, states that adolescents need special protections for their evolving capacities and they can progressively exercise their rights (Committee on the Rights of Child, 2003, Art. 5). It further states that while determining minimum age of sexual consent for adolescents, they should be recognised as right holders keeping in mind their evolving capacity, age and maturity (Committee on the Rights of Child, 2003, Art. 5 & 12-17). General Comment 13, gave clear definition, that sexual abuse means activities imposed by adults on children or by significantly older children using power, threats or pressure, distinguishing this from consensual peer sexual activity (Committee on the Rights of Child, 2011). Consequently, criminalizing all adolescent sexual activity before age 18, as occurs under the POCSO Act, directly contravenes India's obligation to the Convention, and it fails to recognize these important distinctions between abuse and normal adolescent development.

The framework established by the CRC and its General Comments is an example that the POCSO Act's blanket criminalization approach and mandatory reporting requirements fundamentally conflict with international children's rights standards. These standards recognize adolescents as developing autonomous individuals whose evolving capacities must be respected, particularly in healthcare contexts where confidentiality is essential for ensuring access to necessary services.

Conclusion and Way Forward

Love is the most fundamental human experience and even children should not be deprived of the kind of love that is pure, genuine and most importantly CONSENSUAL. India's consent law, despite being enacted with the noble intention of protecting children from sexual assault, has created significant unintended consequences for minors engaged in consensual sexual relationships. The main problem is more than merely criminalizing consensual sexual between adolescent; it includes rigid mandatory sentencing that strips judges of their ability to consider mitigating circumstances during the sentencing process. The law has become a convenient weapon for conservative elements within society who seek to restrict youth sexual autonomy under the guise of protecting traditional social and cultural values. More troubling is how these consistent provisions have been applied without consideration for the unique socio-cultural context.

The blanket criminalization of all sexual interactions involving a child, though in intention, was to safeguard children, but in reality, is denying the children the right to liberty and dignity, by criminalizing normal adolescent behaviour of sexual experimentation and curiosity. POCSO was enacted to safeguard and protect children from sexual exploitation and abuse, but criminalization of normal adolescent behaviour has led to a negative impact on physical and mental health of children as well as it has increased burden upon judiciary. Simply lowering the age of consent would not address the core issue of judicial inflexibility in sentencing decisions. This limitation is evident in many judgements wherein judges find themselves constrained while prosecuting individuals under these provisions. While other countries have implemented flexible approaches that consider factors such as authority dynamic and age proximity, this system may prove challenging to implement effectively in a nation as large and culturally diverse as India.

The automatic decriminalisation of consensual sexual acts by person above 16 years will reduce the POCSO Act to only a 'paper law'. We can not ignore the direct and negative effect; it will have on fight against child marriage and child trafficking. At present, there cannot and should not be automatic decriminalisation of sexual activity between 16-18-year-olds. The most urgent

reform that is needed is, amending POCSO to eliminate mandatory minimum sentencing for cases involving consensual relationships between adolescents and limited judicial discretion can be given to judges while dealing with cases of such nature. However, it has to be kept in mind that such discretion should be “guided judicial discretion” so as to prevent any potential misuse, whatsoever. It is a very genuine problem that such judicial discretion can be exercised arbitrarily and based on gender stereotypes (*Aparna Bhatt & Ors. vs State of M.P. & Anr.*). Therefore, it is essential to keep in mind that if discretionary power is to be exercised by special court in determining consent, then it should be limited and guided.

Simultaneously, mandatory reporting requirements under Section 19 must be refined to focus on cases involving clear exploitation, rather than all adolescent sexual activity. Healthcare providers should be granted professional discretion to maintain confidentiality when treating adolescents in consensual relationships, particularly for reproductive health services. This requires creating explicit exceptions for cases where healthcare professionals determine that reporting would cause more harm than protection, aligned with international standards emphasizing confidential adolescent healthcare access. Along with this, children should also be provided with sex education, that can give them an opportunity to give informed consent, because there is a difference between act of consent and competence to consent. Before consenting to such sexual relationships, children should have knowledge about consequences of such acts.

It should be kept in mind that adolescent love cannot be controlled and should not be controlled. To make an offence the ‘criminal intent’ should be there, however in consensual romantic relationships among children, usually such intent is not present and POCSO still criminalises such acts. The ultimate objective is to create a framework that protects children from exploitation while also recognizing adolescent developmental capacity. This requires moving beyond the false dichotomy between rigid criminalization and unprotected vulnerability toward nuanced approaches that serve genuine protection. Without such reforms, POCSO will continue haunting the normal development behaviour of a child, while failing to address actual child abuse, and thereby will undermine both adolescent rights and effective child protection.

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