
CONSENSUAL & NON-EXPLOITATIVE SEXUAL ACTS UNDER POCSO: AN ANALYSIS

Ms Savi Shivashankar, St. Joseph's College of Law, Bengaluru, Karnataka

ABSTRACT

The rapid increase in adolescent sexual activity in India necessitates a nuanced understanding of the intersection between adolescent rights and child protection, particularly under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). With a notable 16.2% increase in reported cases of sexual offences against children from 2020 to 2021, which reveals a trend where many cases stem from romantic relationships among teenagers reported cases, this research paper seeks to address the apparent disconnect between legal provisions and real-life circumstances, especially concerning consensual relationships among teenagers. The paper examines the historical context of child protection laws, the evolution of the age of consent, and the implications of POCSO on adolescent rights. The paper scrutinizes judicial responses to such cases, which exhibit discrepancies in handling consent and the best interests of minors, emphasizing the role of socio-economic factors in shaping adolescents' maturity and decision-making capabilities. The paper evaluates the effectiveness of current laws in protecting children's rights while considering societal changes. A doctrinal research approach was inculcated, involving a comprehensive review of legal texts, case studies, and societal perspectives. The study concludes that providing a statutory exception for consensual relationships among adolescents could undermine the protective measures established by the POCSO Act, potentially leading to increased exploitation. Instead, the paper advocates for the use of the existing legal framework to deal with such cases in question along with comprehensive education and awareness initiatives to empower adolescents in making informed choices regarding their relationships, ultimately suggesting that a balanced approach combining legal protection and educational outreach is essential for safeguarding children's rights and well-being in contemporary society.

CONSENSUAL & NON-EXPLOITATIVE SEXUAL ACTS UNDER POCSO: AN ANALYSIS

INTRODUCTION:

"The children of today will make the India of tomorrow. The way we bring them up will determine the future of the country."

– Pandit Jawaharlal Nehru, the First Prime Minister of India

India, a nation characterised by a significant population of adolescents, has witnessed an upsurge in sexual activity¹ Among this age group in recent times. As the country strives to address this growing trend, the enactment of the Protection of Children from Sexual Offences Act 2012 (hereinafter referred to as the POCSO Act), aimed to safeguard the rights of innocent children and protect their innocence has often been perceived as an obstacle by teenagers, particularly concerning their rights to engage in consensual sexual relationships. By exploring multifaceted perspectives of the diverse society and cultural norms in India, we gain a deeper understanding of the challenges and considerations involved in striking a balance between preserving children's well-being and respecting the autonomy of adolescents in matters of sexuality. This article delves into the complex interplay between adolescent rights and child protection, shedding light on the nuances surrounding the implementation of the POCSO Act in India.

LEGAL BACKGROUND:

Prior to the enactment of POCSO, the offences against children were mostly treated on par with offences against any adult and provisions of the Indian Penal Code, 1860 (IPC) were applied. However, with respect to cases involving sexual assault and rape, IPC did provide a safety net to children until a specific age as incapable of providing any consent to such acts and disregarded the “defence of consent” taken by the accused in such matters. Initially, IPC established the age of consent for girls—married and unmarried—as 10 years. Later, to protect

¹International Institute for Population Studies, ‘National Family Health Survey (NFHS-5) 2019-21: India’ (Ministry of Health and Family Welfare, Government of India) 210 (NFHS-5); SwagataYadavar, Why India is unprepared for its gathering teen sexual revolution, available at https://www.business-standard.com/article/current-affairs/india-is-unprepared-for-its-gathering-teen-sexual-revolution-118011200170_1.html

"female children from immature prostitution and from premature cohabitation," the age of consent for sexual activity was raised to 12 years in 1889. In 1925, the age of consent was raised even further, to 13 years for rape in marriage and 14 years for other girls. In 1940, it was increased once again to 16 years, and 15 years for rape in marriage.²

Civil society initiatives, official data on child sexual abuse, the Supreme Court's call for legislation, requirements under the Constitution, and the obligations imposed by the United Nations Convention on the Rights of the Child (UNCRC), 1989 led to the enactment of a specific child protection statute in India. A historic piece of legislation known as The Prevention of Sexual Offences against Children Act, 2012 was passed on November 14, 2012, in accordance with Article 15(3) of The Constitution of India,³ to safeguard children's welfare from all types of sexual offences and abetment of their commission.

ABOUT POCSO AND ITS SALIENT FEATURES:

POCSO is a gender-neutral statute enacted with the primary object to ensure the child's healthy physical, emotional, intellectual, and social development. A "Child" is defined as "any person under the age of eighteen years" in Section 2(1)(d) of the POCSO. The POCSO Act of 2012 comprises 46 sections which extend to the whole of India including the State of Jammu & Kashmir after abrogation of Art.370.

POCSO deals with sexual assault, sexual harassment and child pornography against minors regardless of the gender of the child. The Act has laid down special provisions and procedures for dealing with cases under the Act to ensure not only speedy justice but also to preserve the sensitivity and innocence of a child. The burden of proof under this Act is "**guilty until proven innocent**" as opposed to the traditional standard of "innocent until proven guilty." In addition, the law stipulates penalties for making false complaints and providing false information with malicious purposes in order to prevent the misuse of the law.

²Dr. Matthew Waites, *The age of consent: young people, sexuality and citizenship* Basingstoke: Palgrave Macmillan (2009), p.62. Amita Pitre & Lakshmi Lingam, "Age of consent: challenges and contradictions of sexual violence laws in India", *Sexual and Reproductive Health Matters*, 29:2.

³ Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
Art.15(3) - Nothing in this article shall prevent the State from making any special provision for women and children.

According to this Act, every instance of child abuse must be recorded and the police are required to register a First Information Report (FIR) on receipt of every complaint under the POCSO Act. *Suo moto* complaints can also be initiated. Recently, on August 29, 2022, a charge of sexual assault on children was filed against pontiff Shivamurthy Murugha Sharanaru. He was accused of sexually assaulting two high school girls when they were residing in one of the hostels run by the mutt. The two female students then went to "Odanadi Seva Samsthe," a women's and children's residential centre located in the city, and complained about the incident that occurred. The NCPCR has taken suo moto cognizance of the matter. The top pontiff of the Murugha Mutt's anticipatory bail petition was postponed by the District Sessions Court in Chitradurga, and he was given a 14-day judicial custody⁴.

POCSO Act make it mandatory for third parties who are aware of or suspect child abuse to report such instances and failing to report the same could result in up to 6 months imprisonment with or without penalties. This provision entrusts responsibility and liability to every person who has the knowledge of child abuse to take action to prevent the same and not be a mere spectator or a bystander. To facilitate the reporting of offences/complaints, the POCSO e-box was launched on 26th August 2016. POCSO e-Box is an online complaint management system for easy and direct reporting of sexual offences against children and timely action against the offenders under the POCSO Act, 2012.

Ideally, a female police officer not below the rank of sub-inspector should take the child's statement, either at the child's home or another location of their choosing. The Act lays forth penalties and punishments for committing the offences and abetting such commission of offences defined under this Act. The punishment varies from imprisonment of 3 years to death sentence, depending on the degree of offence. With respect to the care of the victim as soon as receiving any such complaint by the Special Juvenile Police Unit (SJPU) or the local Police, they shall produce the child before the concerned Child Welfare Committee (CWC), in case of reasonable apprehension of threat to the safety of the child. The Child Welfare Committee shall make a recommendation to The District Legal Services Authority (DLSA) for legal aid and assistance.

⁴Balasubramanyam, K. R. (2022, September 1). POCSO case against Murugha Mutt head: Court posts seer's anticipatory bail plea to Friday. *The Economic Times*. <https://economictimes.indiatimes.com/news/india/pocso-case-against-murugha-mutt-head-court-posts-seers-anticipatory-bail-plea-to-friday/articleshow/93924106.cms>

POCSO mandates the establishment of special courts to conduct these cases, each of which must be completed within a year⁵. While the names of the minors involved in POCSO cases are kept confidential, they are also protected from being exposed to the accused in any way during the inquiry or trial so as to create a safe and secure environment during proceedings. Also, the child has the option of testifying via video stream rather than being required to repeat their testimony in court.⁶ All inquiries from the defence must go through the judge, and they cannot be made in a combative way. The minor may be assisted in court by an interpreter, translator, special educator, or other expert. The Special Court has established criteria for awarding compensation that take into account things like lost prospects for career and education as well as disabilities, illnesses, or pregnancies as a result of the abuse.

CURRENT SCENARIO:

According to the NCRB (National Crime Records Bureau), overall a total of 1,49,404 cases relating to crime against children were registered in 2021 against 1,28,531 cases in 2020, a rise of 16.2 per cent. If statistics of the NCRB are an indication, every third crime against a child was registered under the POCSO Act. In 2021, a total of 33,348 incidents were registered under Sections 4 and 6 (punishment for penetrative sexual assault and aggravated penetrative sexual assault) of the POCSO Act and in these cases, 33,036 were girls while 312 were boys.⁷

The reporting of POCSO cases has witnessed a noticeable rise, indicating a growing awareness and willingness to address incidents of child sexual abuse. However, the rate of conviction in these cases remains relatively low. One of the reasons for this is that a significant portion of these reported cases involves romantic relationships between teenagers, presenting a challenge for the implementing agencies to effectively navigate the legal framework and ensure the laws are applied to protect the best interests of the children involved. There seems to be a mismatch between the “mischief” that the law aimed to cure and the cases with which the implementing agencies are actually dealing.

⁵ The Prevention of Children from Sexual Offences Act, 2012, Sec. 35(2), No. 32, Acts of Parliament, 2012 (India).

⁶ The Prevention of Children from Sexual Offences Act, 2012, Sec. 36(2), No. 32, Acts of Parliament, 2012 (India).

⁷ Ians. (2022, October 30). Every third crime against children relates to sexual offences: NCRB. . . *The New Indian Express*. <https://www.newindianexpress.com/nation/2022/oct/30/every-third-crime-against-children-relates-to-sexual-offences-ncrb-2513215.html>

The gap between the law and actual circumstances is demonstrated through an examination of 1715 decisions made in "romantic" cases by Special Courts from Maharashtra, West Bengal, and Assam. Acquittals were reported in 93.8% of these cases, which was typical.⁸ In 87.9% of the 1715 cases involving romantic relationships, the victim voluntarily acknowledged having a romantic relationship with the accused, and in 81.5% of those instances, she made no incriminating remarks. In situations where the couples were married, the acquittal percentage stood at 98.1%⁹. Some courts also believed that a conviction would not be in the victim's best interests.

“The duty of the state is to safeguard the ability to make decisions – the autonomy of the individual –and not to dictate those decisions.”¹⁰ - Justice D.Y.Chandrachud in *Justice K.S.Puttaswamy v. Union of India*.

In *Nandakumar's case*¹¹, the father reported his daughter missing. The respondent filed a writ petition with the High Court claiming that although the FIR had been filed, there had been no real inquiry into the matter. The petitioner's daughter was already married. However, the boy was not of marriageable age when the marriage between Nandakumar (the appellant) and Thushara (the petitioner's daughter) was solemnized. The Supreme Court ruled that even though a couple was not legally capable of being married, they had the right to cohabit.

In *Vijayalakshmi v. State*¹², a minor eloped with a major and got married on her own will. A case was filed by her parents under this Act. However, the victim pleaded with the Madras HC to quash the proceeding on the basis of the statement of the consent of the victim. The Court gave relief to the victim in her support and held that “the legislature has to keep pace with changing societal needs” as a result creating exceptions for consensual relationships under POCSO. In *Anoop v. State of Kerala*¹³, the Court noted the worrying increase in sexual offences committed by school children while deciding on a bail application. Without considering the legal repercussions, young children engage in sexual activity. Wherefore, the POCSO Act and

⁸ Volume I; Ministry of Home affairs – National Crime Records Bureau; “Crime in India,2021”, p.28, 69th edition, Published on 16.08.2022

⁹Volume I; Ministry of Home affairs – National Crime Records Bureau; “Crime in India,2021”, p.12, 69th edition, Published on 16.08.2022

¹⁰Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161

¹¹Nandakumar And Another v. State Of Kerala SLP (Crl.) No. 4488 of 2017

¹²Vijaylakshmi v. The State Rep. the Inspector of Police Crl.O.P.No.232 of 2021 [Madras High Court], decision dated 27 January 2021

¹³Anoop v. State of Kerala Bail Appl. No. 3273 of 2022 decided by the Kerala High Court on 08.06.22

IPC provisions both foresee severe penalties for such actions. Hence, the Kerala High Court made a comment regarding the incorrect equating of consensual behaviours involving teens with rape while addressing a bail plea.

Whereas, in *Sabari v. Inspector of Police*¹⁴, the victim girl aged about 17 years on her own will got married to the accused in Singalandapuram and settled in Bengaluru. The grandparents of the victim alleged the accused of kidnap and sexual assault. An appeal was filed by the victim. Eventually, the conviction was set aside for the reasons of involvement of consent in the romantic relationship and the court while passing the order held 'romantic' relationship is a result of mutual innocence and biological attraction. It also suggested that a 'warning' of attraction of the POCSO Act must also be displayed in films.

The 20-year-old defendant in *Bande Rama v. State*¹⁵, who had spent 18 months in judicial custody, the Karnataka High Court dismissed the case after observing that the legal system was painful for all parties involved and that even if the accused had been found not guilty, "the sword of crime would have torn the soul of the accused."

In *Muhammed Riyad v. State Police Chief, Trivandrum*¹⁶, the father of a 19-year-old girl Rifana Riyad, who was unlawfully in the custody of Hanize, an 18-year-old boy, filed a writ of Habeas corpus in the Hon'ble High Court of Kerala to have her body produced. The guy and the girl both testified that they had been deeply in love with each other since they were students when they were brought before the court. The girl moved in with Hanize for the second time after the petitioner first succeeded in getting her back home through a court order issued on an interim basis. The Division Bench of the Kerala High Court, consisting of Justices V. Chitambaresh and K. P. Jyothindranath, rendered the historic decision stating, "The Constitutional Court is bound to respect the unfettered right of a major to have a live-in relationship even though the same may not be palatable to the orthodox section of the society. We are therefore constrained to dismiss this writ petition declaring that the detenu is free to live with the respondent or marry him later on his attaining the marriageable age."

In the context of the recent order by the Bombay High Court in *Imran Iqbal Shaikh v. State of*

¹⁴ Sabari v. Inspector of Police, Criminal Appeal No.490 of 2018, decided on 26.04.2019 [High Court of Madras]

¹⁵ Bande Rama v. State Crim. Pet. 6214 of 2022, decided by the Karnataka High Court on 2.08.2022.

¹⁶ Muhammed Riyad v. State Police Chief, Trivandrum (WP - CrI.No.178/2018)

Maharashtra¹⁷ By granting bail to an accused charged under POCSO, Justice Anuja Prabhudesai remarked that the “POCSO Act was not enacted to punish minors in a romantic or consensual relationships”¹⁸. The judgement of this case is yet to be made.

However, in certain other instances, we have seen that courts have pronounced the accused as guilty irrespective of whether the acts were consensual or not.

The Supreme Court stated in *Hadiya's case*.¹⁹(the famous ‘Love Jihad’ case), it was noted that "it needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance."

The Nagpur bench of the Bombay High Court comprising Justices V.M. Deshpande and Anuja Prabhudesai was making a decision regarding the bail request of a 23-year-old male who was charged with raping and threatening a young girl, who also accused him of kidnapping and sexual exploitation. The accused claimed the victim had "willingly" been in a relationship with him and spent 45 days at his home in Kaushambi, Uttar Pradesh. The Court has reaffirmed that permission from a juvenile for sexual activity is not admissible in any legal context. When handling situations under the Protection of Children from Sexual Offences (POCSO) Act, the method of ascertaining consent—whether given by threat or voluntarily offered—is redundant.

In the case of *State of Madhya Pradesh v. Balu*²⁰, the Supreme Court similarly ruled that the consent of a minor is invalid because it has no legal significance.

The disparity in the judicial pronouncements while dealing with the POCSO cases can also be attributed to the dissimilarity of requirements under personal laws applicable to parties involved in the cases.

A girl can get married after turning 15 or after reaching puberty, according to Muslim personal law.²¹ In the case of *Fija v. State Government NCT of Delhi*²², the court granted the petitioners

¹⁷Imran Iqbal Shaikh v. State of Maharashtra; Bail appln No.997/2022

¹⁸NarsiBenwal, &NarsiBenwal. (2023). POCSO Act was not enacted to punish minors in romantic or consensual relationship: Bombay High Court. *Bar And Bench - Indian Legal News*. <https://www.barandbench.com/news/>

¹⁹Shafin Jahan v. Asokan K.M SLP (Crl.) No. 5777 of 2017

²⁰ State of Madhya Pradesh v. Balu Appeal (crl.) 1273 of 2004

²¹Law Insider IN. (2022). Karnataka High Court: Minor Muslim Girl's Marriage Invalid; POCSO Act Overrides Personal Law. *Law Insider India*. <https://www.lawinsider.in/news/karnataka-high-court-minor-muslim-girls-marriage-invalid-pocso-act-overrides-personal-law>

²²Fija v. State Govt NCT of Delhi W.P.(CRL) 763/2022

a minor girl and her husband—protection from the girl's family because they were legally wed under their personal law and had consensual sexual relations with one another. The court also upheld Muslim personal laws that state that a girl can legally marry under Shariat Law once she reaches puberty.

According to the Hindu Marriage Act, of 1955 & The Special Marriages Act, of 1954 the marriageable age is 18 years for girls and 21 years for boys. The Code of Canon Law for Christians similarly declared that both partners' consent is required.²³ Due to numerous differences in the concept of marriage and age of consent in various personal laws as well as non-uniformity in the decisions of the courts in regard to this. As a result, Sec.42A was inserted in the Act. As stated in section 42-A of the POCSO Act, 2012, it supersedes all of these Personal laws. The Act is not restricted to any one religion or faith. The Act intends to give children substantial legal protection from sexual assaults. The POCSO Act's purpose will be defeated if it is made subject to personal laws.

The Delhi High Court in *Mohd. Imran Khan v. State (NCT of Delhi)*²⁴, refused to nullify the FIR that had been lodged against the petitioner who was charged under the POCSO Act with engaging in sexual activity with a minor. As a result, the POCSO Act will be relevant, according to the court's ruling in this case, which ruled that the sexual activity did not occur during the course of a marriage but rather on the pretence of a vow to marry the girl. Recently, The Karnataka High Court rejected a recent bail plea of a man in *Aleem Pasha v. State of Karnataka*.²⁵, who married a minor Muslim girl where Justice Rajendra Badamkar stated that “the POCSO Act is a Special Act that overrides personal law, and the age for engaging in sexual activities under this act is 18 years old.”²⁶ The POCSO Act will have a dominant impact on Muslim personal law, the Karnataka High Court also remarked in *Rahul v. State of Karnataka*.²⁷

However, The National Commission for the Protection of Child Rights (NCPCR) recently filed a case with the Supreme Court disputing a recent Punjab and Haryana High Court decision that

²³Litigation, T. (2023, April 26). *LEGALITY OF LIVE IN RELATIONSHIP IN INDIA - Tripaksha Litigation*. Tripaksha Litigation. <https://tripakshalitigation.com/legality-of-live-in-relationship-in-india/>

²⁴ Mohd. Imran Khan v. State (NCT of Delhi) Criminal Appeal No. 1516 of 2010 with CrI.No. 1517 of 2010

²⁵ Aleem Pasha v. State of Karnataka, 2022 SCC OnLine Kar 1588

²⁶Law Insider IN. (2022). Karnataka High Court: Minor Muslim Girl's Marriage Invalid; POCSO Act Overrides Personal Law. *Law Insider India*. <https://www.lawinsider.in/news/karnataka-high-court-minor-muslim-girls-marriage-invalid-pocso-act-overrides-personal-law>

²⁷ Rahul v. State of Karnataka Criminal Petition No.1173 OF 2021

determined a Muslim girl can enter into a legal marriage at the age of 16²⁸. The top court bench of CJI D.Y Chandrachud and Justice PS Narasimha held that such a judgement shall not be cited as precedent by any other courts and has issued notice to the respondent. The case is pending for Judgement.²⁹

ANALYSIS:

For several decades, the age of consent for sexual intercourse stood at 16 years, until the POCSO Act, of 2012 raised it to 18 years. Following the Delhi gang rape incident, the government constituted a three-member committee headed by former Chief Justice Verma to suggest amendments to the criminal laws was constituted on December 23, 2012. The Commission examined the law of consent in Canada and England & Wales as it had almost identical circumstances to India with respect to the nature of consent. On January 23, 2013, the report was submitted suggesting to reduce the age of consent from 18 years to 16 years that failed to acquire legal status in this aspect. Furthermore, the landmark judgment of the Supreme Court of India³⁰ Invalidated the marital rape exception from the IPC in 2018 for being unconstitutional which further strengthened the children's rights.

However, with the increase of cases of consensual relationships among teenagers and having regard to the difference of opinion among various courts in handling such cases, a pertinent question arises:

“Should there be a consideration for providing a blanket exemption to consensual or romantic relationships, thus easing the burden on the judicial system and providing a consistent approach to the problem?”

Though there has been a considerable increase in reporting of offences against children, these cases are predominantly related to romantic relationships which have presented a complex challenge within the legal system. While some courts have been reluctant to take action against the accused in cases involving the ‘love factor’, others have stepped forward to protect the

²⁸Aftab v. State of Harayana CRWP-3822-2021 (O&M) 1; Gulam Deen v. State of Punjab

²⁹Kakkar, S. (2023, January 13). SC issues notice on whether Muslim girl can marry person of her choice after attaining puberty. . . *The New Indian Express*. <https://www.newindianexpress.com/nation/2023/jan/13/sc-issues-notice-on-whether-muslim-girl-can-marry-person-of-her-choice-after-attaining-puberty-2537553.html>

³⁰Independent Thought v Union of India Writ Petition (Civil) No. 382 of 2013

victims by invalidating the concept of consent from minors.

While discussing the concept of “validity of consent from a minor” it is pertinent to note here that apart from POCSO, there are many other legislations which has considered it appropriate to fix the age limit of minors as 18 years - the Indian Majority Act 1875 prescribes the age as ‘18 years’ for a person to be treated as ‘major’; Indian Contract Act 1872 states that a minor (i.e. a person below the age of 18 years) is not competent to enter into contract; The Representation of People’s Act 1950 lays down that a person who has attained 18 years of age is eligible to vote and the like. The rationale behind setting up the minimum age as ‘18 years’ is that every contractual party must be able to understand the nature, obligation and consequences of the contract entered into or actions taken by them. Also, Minors are not allowed to become full-fledged partners under the Indian Partnership Act, of 1932. Therefore, it is evident that physical maturity is not always directly proportional to mental competency. The question of thought here is that, when an individual below 18 years is not deemed as competent to enter into a private contract mostly affecting their property, it is natural that they are not yet ‘fit’ to take or consent to acts which affect their life, body and health.

Further, it should also be observed that the age of consent for minors, particularly girls, in relation to actions or offences involving sexual assault was increased over a period of time from the age of 10 to 18 years in the present time. This increase was driven by the need to address various social as well as economic problems faced by society at large such as high maternal mortality rates, and the increased risk of sexually transmitted diseases.³¹, a growing number of children forced into prostitution, child marriages, a higher rate of dropouts by girls from schools and lower participation of women in general in economic activities.

Adapting laws to changing societies is essential, but it is crucial to remember that laws are not crafted for individual incidents but to address broader issues. The prevalence of consensual romantic relationships may be more pronounced in metropolitan and cosmopolitan cities, but it is essential to acknowledge that tier 2, and tier 3 cities and rural areas are still grappling with child marriages, early pregnancies, human trafficking, and prostitution. In most of the cases,

³¹ According to UNAIDS reports, this deadly virus is present in 2.1 million Indians, with young adults making upto 30% of the population - Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/32, paras 9, 11 (4 April 2016)

the Special Courts were hesitant to punish the accused and disrupt the couple's marriage.³² Therefore, de-criminalizing consensual sexual acts involving adolescents over the age of 16 may reduce concerned cases in urban only, but would cause a complete injustice to those victims who got married to the accused under societal pressure. Hence, such a law would violate Article 14 of The Constitution of India, on the basis of the non-availability of rational nexus.

Additionally, adult women in such areas face challenges in raising their voices against domestic violence, dowry harassment and sexual assault within marriages. Only 2% of victims leave the abusive relationship, claims a survey.³³ When one partner starts to be physically or mentally abusive, the other person must take a stance for themselves and leave the relationship. Nobody should be given “okay” to undermine their own self-worth. Whereas India has not evolved in such a way where the women have raised voices against abusive acts of their family members irrespective of their age. The social and economic conditions largely influence the behaviour of such women and therefore it would not be wrong to conclude that the socio-economic factors which are mainly responsible for developing physical and mental maturity in children are not uniformly available in India and as a result, the expected level of maturity is hardly conceivable to be uniform among the teenagers.

CONCLUSION:

In conclusion, we are of the opinion that while it is crucial to strike a balance between protecting children and respecting the autonomy of adolescents, providing an outright exemption for romantic relationships will undermine the safeguards put in place to prevent exploitation and abuse for which the POCSO Act was created at the first instance.

Granting a statutory exception to romantic relationships among teenagers not only disregards the hard work put through the generations to liberate women and children from socio-economic evils but also lowers the protection shield available for vulnerable individuals. Hence, legalizing ‘romantic’ relationships may disturb the public peace & order even more than it may

³²Volume I; Ministry of Home affairs – National Crime Records Bureau; “Crime in India,2021”, p.12, 69th edition, published on 16.08.2022; “46.5% of the "romantic" cases involved married couples as victims “

³³Committee on the Rights of the Child, General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016

‘reduce’ the burden on the legal system. A step to decriminalize consensual sexual and non-exploitative sexual acts would lead to greater trouble than the greater good.

Instead, emphasis should be placed on comprehensive education and awareness programs, as outlined in the POCSO and rules thereunder. By providing education on consent, healthy relationships, and the potential risks associated with early sexual activity, we can empower teenagers to make informed choices while respecting the boundaries of consent and safeguarding their well-being. Fostering open dialogue, promoting sex education, and creating safe spaces for adolescents to seek guidance and support are essential steps towards creating a society that protects its children while promoting their personal development. By striking the right balance between education, awareness, and legal protection, we can empower teenagers to navigate their relationships responsibly and ensure their overall well-being.

“In this land of Ganga, there was education of culture. But more importantly, there was a culture of education.”

- Narendra Modi, Prime Minister of India

REFERENCES:

JOURNALS: -

- ❖ Chaudhary, S., 2022. Should the age criteria for consensual sex be lowered in India? *The Hindu*.
- ❖ Anchan, V., Janardhana, N. and Kommu, J.V.S., 2021. POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India. *Indian Journal of Psychological Medicine*, 43(2), pp.158-162.
- ❖ Renu, R. and Chopra, G., 2019. Child sexual abuse in India and the Protection of Children from Sexual Offences (POCSO) Act 2012: a research review. *Integrated Journal of Social Sciences*, 6(2), pp.49-56.
- ❖ Raha&Ramakrishnan, Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief (Enfold Proactive Health Trust, UNFPA & UNICEF 2022).

STATUE: -

- ❖ The Protection of Children from Sexual Offences Act, 2012, No.32, Acts of Parliament, 2012 (India).