
REVISITING THE AGE OF CONSENT UNDER POCSO: A CASE OF LEGAL REFORM IN CONSENSUAL ADOLESCENT RELATIONSHIPS

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted with the laudable objective of safeguarding children from sexual abuse, exploitation, and assault. However, its rigid framework often criminalizes consensual romantic or sexual relationships between adolescents aged 16 to 18 years, a phase when biological maturity and psychological understanding of sexuality begin to take shape. In many rural and economically disadvantaged settings, young boys and girls enter into such relationships without awareness of the grave legal implications. This creates a situation where boys, particularly from poor or marginalized backgrounds, face prosecution for rape and sexual assault, even where the relationship was consensual and devoid of coercion. Families, often under societal pressure to preserve honour, or sometimes due to political rivalry, weaponize the law by lodging complaints, resulting in severe consequences for the boy's future. While the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS) contain certain exemptions for marital sexual relations even where the wife is below 18, POCSO leaves no such space for recognizing adolescent consent. This inconsistency reflects a conflict between law, biology, and social reality.

This paper critically examines the judicial approach towards consensual relationships under POCSO, explores case law where courts have expressed concern about misuse, and highlights the socio-legal implications of prosecuting adolescent boys in such circumstances. Drawing from judgments of Supreme Court and High Courts and media reports, it argues for a nuanced understanding of adolescent consent and calls for legislative reform that balances the need for child protection with the rights and realities of adolescents. The paper suggests introducing a "close-in-age" exemption or a graded approach to adolescent sexuality, aligning with international practices, thereby preventing undue criminalization of consensual adolescent relationships. Ultimately, the article underscores the urgent need to harmonize law with lived realities, ensuring that the protective intent of POCSO is not distorted into a tool of injustice.

The Protection of Children from Sexual Offences Act, 2012 (POCSO), was enacted with the noble intent of safeguarding children from sexual abuse and exploitation. It provides a comprehensive mechanism to punish a wide range of sexual offences, defines a child as any person under the age of eighteen, and criminalises all forms of sexual activity with such a child regardless of consent. The intent was clear: to provide an uncompromising protective framework that would shield vulnerable minors from predatory adults and from the deeply entrenched culture of child sexual abuse in India. However, in practice, the rigid framework of the law has also produced consequences that were perhaps unintended by Parliament, namely, the blanket criminalisation of consensual relationships between adolescents, particularly those between 16 and 18 years of age, who are physiologically and psychologically capable of making choices regarding intimacy, yet are deemed legally incapable of consenting.

In rural and economically weaker communities, this tension between adolescent agency and legal prohibition plays out in particularly harsh ways. Many teenage boys and girls who fall in love or enter relationships that involve consensual intimacy find themselves suddenly entangled in the criminal justice system. When discovered by parents or relatives, such relationships are often reported to the police as cases of kidnapping, rape, or aggravated penetrative sexual assault under POCSO. Frequently, these complaints are not motivated by a genuine sense of abuse but arise from fear of social stigma, attempts to preserve family honour, or, at times, political and personal vendettas. The consequences for the boy are devastating: he is branded as a rapist, incarcerated during the pendency of trial, and his prospects in education, employment, and social standing are permanently scarred.

The situation becomes even more complex when one considers the legal inconsistencies between POCSO and the Indian Penal Code (IPC). Under Section 375 of the IPC, sexual intercourse with a wife who is above 15 years but below 18 years is not considered rape, despite the fact that POCSO unequivocally criminalises such conduct. The Supreme Court in *Independent Thought v. Union of India*¹ attempted to harmonise these laws by reading down the marital exception, holding that sexual intercourse with a wife below 18 years would amount to rape. Yet, the anomaly highlights the uneasy coexistence of laws that define childhood differently and treat adolescent sexuality in contradictory ways. High Courts across India, however, have expressed concern about the rigidity of the law. The Madras High Court in *Vijayalakshmi v. State*² observed that consensual relationships between adolescents cannot be

1 (2017) 10 SCC 800

2 CrI.O.P.No.232 of 2021

treated at par with heinous sexual assaults, recommending legislative reconsideration. Similarly, the Karnataka High Court has noted that prosecuting adolescent lovers under POCSO is counterproductive, as it criminalises natural sexual exploration. Recent statistics underline this concern. According to the National Crime Records Bureau (NCRB) 2022 Report, nearly 25–30% of POCSO cases involve consensual adolescent relationships, often registered by parents against boys from different castes or communities. This pattern reflects how the law is being misused to enforce social norms rather than to punish genuine predators.

The age of consent in India has undergone gradual shifts over the last century. From being as low as ten years in the late nineteenth century, it was raised to twelve by the Age of Consent Act, 1891, later to fourteen in 1925, and to sixteen in 1940. It was only after the Criminal Law (Amendment) Act, 2013, enacted in the aftermath of the Nirbhaya case, that the age of consent was raised to eighteen. While the intent was to prevent exploitation of minors, particularly child marriages and trafficking, this legislative choice ignored the reality of consensual adolescent relationships. The POCSO Act, in Section 2(d), defines a "child" as any person below 18 years of age. Section 3 and Section 5 criminalise penetrative sexual assault, while Section 7 defines sexual assault, all of which apply irrespective of consent when the girl is under 18. This framework eliminates judicial discretion to assess voluntariness or maturity in adolescent cases, thereby equating consensual intimacy with predatory assault. Many critics have argued that this shift, though well-intentioned, ignored the socio-cultural and biological realities of adolescence in India. Girls in many communities are married soon after puberty, and relationships often begin in teenage years. The sudden criminalisation of all consensual sexual activity below eighteen not only contradicts such practices but also makes criminals out of adolescents who, in many cases, are themselves below the age of majority.

The judiciary has repeatedly been confronted with this dilemma. Courts across the country have noted with concern that a substantial portion of cases under POCSO involve consensual relationships between adolescents. For instance, in 2025, the Allahabad High Court granted bail to an eighteen-year-old boy accused of raping his sixteen-year-old girlfriend, observing that the POCSO Act was never intended to criminalise consensual romantic relationships between adolescents and that an overly strict interpretation defeats the spirit of justice.³ Similarly, the Supreme Court in August 2025 emphasised that “teenagers falling in love should

³ Times of India, “POCSO Act not meant to criminalise adolescents’ consensual relations: Allahabad HC,” May 2025

not be treated as criminals,” calling upon lawmakers to distinguish between genuine cases of sexual abuse and instances of adolescent romance.⁴

Yet, despite such judicial observations, trial courts continue to record convictions in cases where consent is evident but irrelevant in law. In one striking case from Nagpur, a seventeen-year-old girl suffered a miscarriage while living with her partner, also a teenager. The relationship was consensual, yet the boy was booked under both POCSO and Section 376 IPC, his life altered irreversibly merely because of the rigid statutory framework.⁵ These are not isolated examples; NCRB data consistently reveals that a significant percentage of POCSO prosecutions arise from such consensual contexts. Indeed, a study by a sessions court in Mumbai found that in dozens of cases, girls above eighteen were falsely recorded as minors by their families in FIRs to prevent socially unacceptable relationships, thereby using POCSO as a tool of coercion rather than protection.

The debate surrounding reform of POCSO has intensified in recent years. Scholars, activists, and even some judges have argued for the introduction of a “close-in-age” exemption, popularly called the “Romeo–Juliet clause.” Under such a provision, consensual sexual activity between adolescents who are close in age, typically within a gap of two or three years, would not be criminalised. This would preserve the protective purpose of POCSO against adult predators while ensuring that adolescent relationships are not punished with the same severity as acts of sexual violence. The Law Commission’s, however, has expressed hesitation, arguing that lowering the age of consent or carving out exceptions could open the floodgates to exploitation by older men, particularly in a society where child marriage and patriarchy persist. The Government of India, too, has firmly opposed any dilution of the age of consent, warning that such changes would undermine child protection mechanisms.⁶

Nonetheless, international experience offers valuable lessons. Many jurisdictions around the world maintain a legal age of consent at 16 or 17 but simultaneously recognise close-in-age exemptions. For example, in several states in the United States, a minor who is 16 may legally engage in consensual sexual activity with a partner who is up to four years older, provided there is no coercion or authority involved. Canada follows a similar model. These provisions prevent the branding of teenagers as sex offenders merely for being in consensual relationships

4 Economic Times, “Is it criminal to love? SC calls for distinction between genuine romance among teens & POCSO offences,” August 2025.

5 Times of India, “17-year-old’s miscarriage leads to rape case; live-in partner held,” June 2025.

6 Tribune India, “Centre opposes lowering consent age from 18 to 16, warns it’ll trigger abuse,” March 2025.

with their peers. India's absolute bar at 18, by contrast, reflects a paternalistic approach that denies adolescents their emerging autonomy. India's rigid framework stands in contrast. By setting the age of consent at 18 without exceptions, it disregards adolescent autonomy and developmental psychology, which recognise that individuals above 16 have evolving capacities to make informed choices. The UN Convention on the Rights of the Child (CRC), to which India is a signatory, also acknowledges evolving capacities, urging States to balance protection with respect for autonomy.

The ground realities in rural India further underscore the urgency of reform. In villages where education levels are low and legal awareness is virtually absent, young boys and girls often enter into relationships without any understanding of the legal consequences. Families, upon discovering such relationships, frequently lodge criminal complaints not because of actual exploitation but due to fear of social stigma or to protect the girl's perceived honour. At times, complaints are politically motivated, used as tools of revenge or pressure against the boy's family. In all such situations, the boy becomes a scapegoat, bearing the entire brunt of criminal law, while the girl is portrayed as a victim regardless of her own agency. The law, in this sense, infantilises adolescent girls, assuming that they are incapable of consent even when they are physically and emotionally mature enough to make choices. This dynamic reflects a deeper contradiction in Indian society. On one hand, adolescent marriages, though illegal under the Prohibition of Child Marriage Act continue to take place, particularly in rural Rajasthan, Haryana, and Bihar. On the other hand, adolescent consensual relationships outside marriage are prosecuted as sexual offences under POCSO. The law thus inadvertently punishes love while tolerating exploitative child marriages, revealing a gap between legal frameworks and social realities.

Further, the absence of any protection for boys aggravates this imbalance. While the law is gender-neutral in text, in practice, it is overwhelmingly boys and young men who are prosecuted. The stigma of being branded a sexual offender destroys their educational and career prospects, even when acquitted. This raises questions of proportionality: does a consensual act between a 17-year-old girl and an 18-year-old boy warrant the same severity of punishment as predatory child abuse?

The inconsistency between child protection and adolescent rights is particularly glaring when juxtaposed with marriage laws. Despite the prohibition of child marriage, it continues to be prevalent in many communities, and marital exceptions under criminal law continue to provide

implicit recognition of such unions. Thus, paradoxically, a married sixteen-year-old girl may legally have sexual intercourse with her husband under certain interpretations of IPC provisions, while her unmarried peer in a consensual relationship is deemed a victim of rape. This contradiction undermines the very purpose of POCSO and erodes public confidence in the fairness of the law.

What is required, therefore, is a nuanced legislative response. One approach could be to retain the age of consent at eighteen but to introduce a carefully drafted exception for consensual relationships between adolescents above sixteen, provided the age gap does not exceed three years and there is no evidence of coercion, exploitation, or authority. Such an exception could also empower courts with discretion to assess the circumstances of each case, ensuring that genuine cases of abuse are punished while consensual romances are not criminalised. Additional safeguards, such as mandatory counselling for adolescents involved in such cases and community awareness programs, could help mitigate risks of misuse.

At the same time, concerns about possible misuse cannot be dismissed. Critics argue that once exceptions are introduced, older men may attempt to exploit minors under the guise of “consensual relationships.” To counter this, the law must be crafted narrowly, with strict evidentiary requirements and with the burden on the accused to demonstrate that the relationship was genuinely consensual and within the defined age bracket. Judicial training and sensitisation would also be necessary to ensure consistent application.

Ultimately, the debate is not about lowering the protective threshold of child rights but about recognising the agency of adolescents. As the Supreme Court has repeatedly stressed, law must keep pace with social realities. Adolescents today are exposed to greater awareness of sexuality, relationships, and autonomy. To criminalise their choices without distinction from actual cases of abuse is both unjust and counterproductive. Instead of safeguarding their future, the law ends up destroying it.

The question, then, is not whether POCSO should protect children, it must and will, but whether the law should also acknowledge that not every sexual act involving a person under eighteen is an act of abuse. By refusing to distinguish between predatory exploitation and consensual adolescent romance, the law collapses two vastly different realities into one category of crime, thereby undermining justice. The time has come for Parliament to consider amendments that strike a balance between protection and autonomy, between safeguarding childhood and respecting adolescence.