
CORRELATION BETWEEN AGE OF CONSENT AND AGE OF MARRIAGE

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ABSTRACT

The Age of Consent refers to the legally recognised age to give consent to engage in a sexual activity. The present age of consent in India is 18 years. This implies that the consent to engage in a sexual activity, provided by any individual falling below the prescribed age of 18, shall be treated as 'no consent' or as a minor's consent is treated to be 'Void ab initio' in contractual terms.

Following the laid down structure of the amended criminal laws of India, Bharatiya Nyaya Sanhita 2023, Section 63 defines the offence of 'Rape' (replacing the previous Section 375 of the Indian Penal Code, 1860). The Section hereby defines the circumstances in which a man is said to commit rape if he engages in specified sexual acts with a woman under any of the listed circumstances, including:

1. Against her will.
2. Without her consent.
3. With her consent obtained by putting her or a person in whom she is interested in fear of death or hurt.
4. With her consent when she believes he is her lawful husband due to deception.
5. With her consent when, because of unsoundness of mind, intoxication, or administration of a stupefying substance, she is unable to understand the nature and consequences of the act.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

The provisions of Bharatiya Nyaya Sanhita 2023, state that any of the above mentioned acts if done without a woman's consent or against her will, shall be an offence of 'Rape'. Therefore, it may be inferred through the same that only a woman who is above the prescribed age of consent, i.e., 18 years of age, is eligible to give consent to engage in sexual activities. Any

woman below the prescribed age of consent, when engages in any sexual activity, even after giving her consent, would not be considered as consent. Whereas, Protection of Children from Sexual Offences Act 2012, also known as the POCSO Act 2012, is a gender neutral act that penalises sexual offences committed against minors of both the genders, making it a gender neutral law.

The legality of one statement is felt through different waves in different areas of the country. Every area is impacted differently over the same verdict or motion passed. The rural sectors, often overlooked from the definition of ‘society’ and ‘progress’ are impacted in much different ways than the metropolitan cities. As per the Ministry of Statistics and Program Implementation (MSPI), the percentage share of rural and urban establishments in all of India is 59.48 per cent for Rural and 40.52 per cent for Urban sector.¹ The harsh reality of rural society is that there is no recognition of the term ‘consent’. The matter of consent should be given the validity of a Fundamental Right as per Article 21 of the Indian Constitution, as the right to give consent leads to the formation of living a dignified life, but within these impoverished states or regions it is felt to be a luxury more than a Fundamental Right. Within the rural sectors, marriage is not a personal choice. Marriage is seen as an escape for the parents of the girl child to free themselves from the liability. Whereas from the perspective of the parents of a boy child it is a profitable move as with marriage comes dowry and a new member to the family to work without wages.

As per the UNICEF Global databases 2025, Demographic and Health Surveys (DHS) and other national surveys, India is on the list of Top 5 countries with the highest prevalence rates of child marriage in South Asia.

First being Bangladesh (51.0 per cent), Second Nepal (35.0 per cent), Third Afghanistan (29.0 per cent), Fourth Bhutan (26.0 per cent) and Fifth India (23.0 per cent).²

But the truth does not only prevail within the rural jurisdiction of the society, but also the rural migrants who are residents of the cities, in search of work, are the victims of their own mindsets. 39.3 per cent and 33.5 per cent of all migrant children (between the age group of 10-19 years) were married, according to census 2001 and 2011 respectively (as per UNICEF’s

¹ https://www.mospi.gov.in/sites/default/files/economic-census/sixth_economic_census/all_india/7_ChapterII_6ecRep.pdf

² <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/south-asia/>

research brief on ‘Understanding Child Migration in India’, March 2020).³

History of Age of Consent in India

In the 84th Report of the Law Commission, it was laid down that the Age of Consent in India has been subjected to increase more than once. The historical development may, for convenience, be indicated in the form of a chart as follows:

Year	Age of Consent under Sec. 375, IPC	Age Mentioned in the Exception to Sec. 375, IPC	Minimum Age of Marriage under the Child Marriage Restraint Act, 1929
1860	10 Years	10 Years	-
1891 (Act 10 of 1891)	12 Years	12 Years	-
1925	14 Years	13 Years	-
1929 (after the passing of the Child Marriage Act)	14 Years	13 Years	14 Years
1940	16 Years	15 Years	15 Years
1978	16 Years	15 Years	18 Years

The same Report of the 84th Law Commission analysed the question as to the increase of minimum age of consent to 18 years. It was held in the report, that the minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant clause of Section 375 should reflect this changed attitude.⁴ Since marriage with a girl below the age of 18 is prohibited, sexual intercourse with a girl below 18 years should also be prohibited.⁵

³ <https://www.unicef.org/india/media/3416/file/child-migration-india2020-policy-brief.pdf>

⁴ https://prsindia.org/files/bills_acts/bills_parliament/2012/Legislative_Brief_-_Criminal_Law_Amendme nt_2012.pdf

⁵ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080544>

In the 283rd Report of the Law Commission, the age at which a female may lawfully give her consent for sexual acts is referred to as the age of consent (AoC). In India, the AoC has been defined as 16 since 1940, until the age was changed to 18 in 2012, following the implementation of the gender neutral Protection of Children from Sexual Offences (POCSO) Act. The raising of the AoC to 18 created an absolute prohibition against all forms of sexual activity, including, most notably, penetrative sex, between individuals of any gender who are below 18. This is in large part the result of the definition of “child” as being a person under the age of 18 years as defined by the Convention on the Rights of the Child (UN CRC, 1990) and incorporated into the POCSO Act. It is, therefore, clear that the POCSO Act does not provide for a finding of informed consent to sexual activity where the individual is a minor. The Criminal Law Amendment Act 2013 (CLA 2013) also amended Section 375 of the Indian Penal Code, 1860 (IPC) which, prior to the enactment of the CLA 2013, defined rape as being a criminal offence only when committed against females. The CLA 2013 extended the AoC in respect to rape to 18 years of age; therefore, any penetrative sexual activity that occurs between two individuals under the age of 18 years would be classified as “statutory rape” and, therefore, would be considered to be rape, regardless of whether there is any element of consent. The Commission should be commended for considering the age of consent in India within the broader historical context of international and national legal systems.⁶

Is marriage being used as a remedy in POCSO Cases?

A number of court decisions make it clear that marriage can be seen as a way of eliminating criminal liability. In the Supreme Court, judges have dismissed criminal cases against defendants who later married the alleged victims on the grounds that there are exceptional circumstances in the cases. High Courts in Kerala, Allahabad and Bombay have also issued similar rulings based on the premise that if attempted murder charges can be dismissed on the same grounds, then charges under the POCSO Act may also be dismissed.

The Supreme Court has exercised its plenary powers under Article 142 of the Constitution to quash POCSO proceedings against a man for entering into a sexual relationship with a girl, then a minor, and later marrying her, saying "the crime was not the result of lust but love".

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⁶ <https://ijme.in/articles/law-commission-of-india-report-on-the-age-of-consent-denying-justice-and-auto-nomy-to-adolescents/?galley=html>

The bench said even the most serious offenders of law do receive justice moderated by compassion from the courts, albeit in appropriate cases, and given the peculiar facts and circumstances here, a balanced approach combining practicality and empathy is necessary.

"The appellant and the victim are not only legally married, they are also in their family way. While considering the offence committed by the appellant punishable under the POCSO (Protection of Children from Sexual Offences) Act, we have discerned that the crime was not the result of lust but love."

"The victim of crime herself has expressed her desire to live a peaceful and stable family life with the appellant, upon whom she is dependent, without the appellant carrying the indelible mark on his forehead of being an offender," it said.

The top court said the continuation of criminal proceedings and the appellant's incarceration would only disrupt this familial unit and cause irreparable harm to the victim, the infant child, and the fabric of society itself.

Warning the convict of the consequences, the top court imposed a condition on the man for the relief and said he will not desert his wife and child and also maintain them for the rest of their life with dignity.⁷

This raises two concerns. Firstly, marriage does not prove that an offence was never committed because there are many instances where a settlement is reached with a lot of pressure from family members, society, or financial reasons. This puts into question whether the settlement was entered into freely or if there was coercion. Secondly, by having the courts treat marriage as a remedy to the crime, they are condoning the idea that a victim has transferred her status from a survivor of abuse to a spouse as a way of resolving the matter.

This will create acceptance of impunity for the abuser.

Article 141 of the Indian Constitution confers such powers on the Supreme Court to establish Judicial Precedents which are authoritative in nature rather than persuasive, i.e. such precedents shall be binding without reasonable exceptions on every lower court and tribunal within the jurisdiction of the country. When a precedent declaring an exception for the conviction to a

⁷ <https://www.thehindu.com/news/national/supreme-court-exercise-plenary-powers-to-quash-pocso-cas-e-against-man-who-later-married-victim/article70229220.ece>

POCSO case is upheld by a court of such authority, that it is almost believed by many jurists that it holds the power of making laws which have an equal standing to a statute, it indicates the normalisation of early or underage marriage or the fact that marriage might be a solution to such a heinous crime. The above precedent also in a way declares the legitimisation of underage sexual relationships. This is where sociology and legal reality intersect.

The Deterrent Theory of Punishment, that believes not just in punishing but in prevention of crime that could take place in the future. This exception to POCSO reduces the fear of punishment and builds a strong loophole of compromise, making a crime against the society to be treated as a mere contractual obligation that could be settled by a compromise. As if it is a right in personam and not a responsibility towards the society. Especially considering the weaker sections of the society, where the 'romeo juliet' angle is a taboo, the coming of age of teenage women in such areas would further normalise the already existing idea of child marriage and child pregnancy.

To sum it up, does the exception to a POCSO conviction, not create an exception to Prohibition of Child Marriage? And wouldn't a lower consent age weaken the deterrence against early marriage?

Although the Courts refer to these types of rulings as exceptional, their occurrence is becoming increasingly common. What was once an exception is now being started rapidly creating new legal precedence through the courts. In *Anversinh vs State of Gujarat (2021)*, the Supreme Court made it clear that whether or not the victim gave her consent as a minor would not affect the outcome of a kidnap or sexual assault charge. The Bombay High Court has cautioned judges against the habitual acceptance of "adolescent love" as it does not meet the intent of the POCSO Act. Nevertheless, courts continue to issue rulings that favour harmony over statutory compliance.⁸

In the case of *the State of Madhya Pradesh v. Laxmi Narayan (2019)*, it was observed the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when

⁸ <https://theprint.in/opinion/pocso-cases-settled-by-marriages/2749845/>

the parties have resolved the entire dispute amongst themselves; such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society⁹.

How does Age of Consent impact Age of Marriage?

The mechanism proposed here is indirect rather than causal in the strict legal sense, and the paper does not claim that a change to the age of consent would, by itself, cause child marriage rates to rise. Rather, it argues that the reform would remove one of the few legal levers currently available to disrupt the family/community decision to marry off a couple following a discovered relationship, through at least three channels.

When POCSO raised the age of consent from 16 to 18 in 2012, it was consciously calibrated to match the marriageable age for women, closing a loophole under which a girl could lawfully be married, and lawfully have marital relations, before she could otherwise consent to sex. This 'bright line rule' was subsequently reinforced by the Supreme Court in *Independent Thought v Union of India*, which struck down the marital rape exception for wives between 15 and 18, holding that a married girl child could not be treated differently from an unmarried one.

A renewed debate is now underway on whether the age of consent should be lowered to 16. This debate has been driven almost entirely by an urban fact pattern: cases in which POCSO is invoked against consensual relationships between adolescents aged 16 to 18, often at the instance of disapproving families, resulting in the criminal prosecution of teenage partners for conduct that involved no exploitation.

In January 2026, the Supreme Court, in *State of Uttar Pradesh v Anurudh*, acknowledged this pattern of misuse and urged the Union Government to consider legislative correction.

A substantial body of legal and sociological commentary on child marriage in India identifies family and community reputation, often described as 'izzat' or honour, as the primary driver of early marriage decisions in rural and semi-urban settings, distinct from the economic or educational drivers more commonly discussed in policy literature. Where a couple's premarital relationship, whether romantic or physical, becomes known within a village or extended

⁹ <https://www.lawweb.in/2019/03/landmark-judgment-of-supreme-court-for.html>

kinship network, the socially available responses are narrow: separation and social ostracism of the family, a criminal complaint (frequently invoking POCSO where a party is a minor), or marriage, often expedited, and often below the statutory minimum age. Marriage functions, in this setting, as a mechanism for restoring family standing rather than as an outcome of the couple's own long-term intention.

This dynamic is distinguishable from the urban fact pattern that has driven the present reform debate. Where urban discourse frames the adolescent couple as autonomous individuals whose relationship is criminalised against their own wishes by an overprotective law, the rural pattern more often involves the couple's relationship being adjudicated and resolved by parents, elders, or a caste or village council, with marriage imposed as a corrective rather than chosen freely by the parties themselves. The same statutory age of consent is therefore doing two very different kinds of legal work in the two settings: in the first, it operates against the couple; in the second, it currently operates, however imperfectly, as one of the few external checks against the family and community deciding the matter through early marriage instead.

Child-rights litigation has already documented instances in which personal law is invoked to defend an underage marriage once a relationship becomes known, notwithstanding the secular minimum-age rule under the PCMA.

In *Gulam Deen v State of Punjab & Haryana*, the Punjab and Haryana High Court granted protection to a married couple where the girl was 16, on the basis of personal law recognising the marriage as valid, before the Supreme Court stayed that order

A lowered age of consent would not, by itself, alter the PCMA's marriageable age, but it would remove the sexual-offence dimension that currently accompanies such cases, narrowing the grounds on which authorities can intervene before a personal-law marriage claim is asserted.

Conclusion

The age of consent and the age of marriage are legally distinct but socially entangled thresholds in India, particularly in rural settings where a discovered adolescent relationship is far more likely to be resolved through family-arranged marriage than through the individual choices of the couple involved. The case for reforming POCSO's treatment of consensual urban adolescent relationships is real and has been substantially made out before the Supreme Court. But a

national reform calibrated only to that urban fact pattern risks an unintended and, at present, unmeasured rural consequence: the removal of one of the few legal deterrents against resolving a discovered relationship through underage marriage. A close-in-age exemption, carefully bounded and monitored, offers a more defensible path than a blanket reduction, and any reform ought to be accompanied by the data collection necessary to test, rather than assume, the correlation this paper identifies.