
ANALYSIS OF AGE OF CONSENT UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT 2018

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1-Introduction:

Meaning of age of consent and its importance:

The term “**age of consent**” refers to the minimum age at which a person is legally competent to consent to involve in sexual engagements. It draws a line between when someone is considered too young to make such choice and when their choice or consent gets recognized under law. This whole concept of consent revolves around the protection of minors because they belong among the vulnerable groups that is easily prone to manipulation, coercion or exploitation.

At the same time, laws related to consent of age are closely associated to debates about personal liberty, adolescent rights and social morality. If the consent age is set too high, it may criminalize consensual teenage relationship while if it is set too low, it might put minors at the risk of exploitation. Thus, the legal line is created not only by the need to protect children but also by the social, cultural, and political values of nation.

Framework of POCSO Act, 2012

The Protection of Children from Sexual Offences Act, 2012(POCSO)¹ was enacted on 19 June 2012 with two major objectives:

- To provide protection to children against offences of sexual assault, sexual harassment and child pornography.
- To provide for establishment of special courts for trial of such offences.

¹ Protection of children from sexual offences act 2012.

Prior to this law, there were provisions related to rape and sexual assault in the Indian Penal Code (IPC), but those laws were not child-specific and did not cover the wide range of sexual exploitation or abusive behavior children might face.

POCSO was acknowledged as a landmark law because:

- It provides more child-specific definitions of sexual assault, harassment and pornography.
- It provides with the establishment of special courts for trial of such offences.
- It provides with the special procedures regarding the investigation and trial of such offences.
- It defined that anyone below the age of 18 year is a child, hence fixing the consent age at 18 years.

This provision clearly describes that any sexual activity involving someone below the age of 18 years, would be treated as a criminal offence, even if consensual. Hence this provision not only criminalized the exploitive acts by the adults but also consensual relationship among two adolescents under 18.

The amendment of 2018²

In 2018, the POSCO act was amended but these amendments focus more on punishments than prevention. The amendment introduced the following:

- It makes the punishments stricter, including death penalty in certain aggravated cases.
- It introduced severe minimum sentences against sexual assault of minors.
- This amendment did not bring any change in the provision of age of consent. The age of consent remains fixed at 18 years, anyone below this is a minor.

² The criminal law amendment act 2018.

The main problem in this amendment is that it did not address the important issue related to age of consent which is the decriminalization of consensual relationships among adolescents or introducing reforms like close-in-age exception. This gap has been the center of recent debates.

Present debates and need for research

At present, there are debates on whether India should bring amendment in regard to the of age of consent and make it lower from 18 to 16 years or introduce reform like close -in-age exception.

- **Supporters of the present law** keep arguing that keeping the age of consent at 18 years protects the minors from exploitation by older predators especially since emotional and psychological maturity often develops later than physical maturity.
- **Critics of the law** contend that present law unfairly criminalizes the consensual relationship among adolescents. They point out that many cases filed under POCSO Act are less about genuine exploitation and more about parental opposition, especially in regard to inter-caste or inter-religious relationships, where the families use the law falsely to punish the consenting couples.

This research aims to analyze these debates in depth and to find out whether such reforms are needed or not.

Basis of the study:

The issue of age of consent is not merely legal but also a matter of societal norms, adolescent rights, parental authority and gender relations. For example- In many reported cases, under POCSO Act the parents falsely report their daughter's partner in order to establish control. In such cases the law which is intended to provide protection ends up criminalizing consensual adolescent relationships, thereby overburdening the courts with cases that are not truly about abuse but about teenager consensual relationships.

By analyzing legal provisions, judicial interpretations, committee reports and comparative outlook, this research will explore whether fixing the age of consent at 18 years maintains the right balance between the protection and liberty.

Scope and purpose of research:

1-To examine the legal structure of POCSO Act 2012 and its amendment in 2018 with respect to consent age.

2-To analyze judicial precedents such as *Nipun Saxena v. Union of India (2018)* and 283rd report of Law Commission of India.

3- To analyze the recommendations made by Justice J.S Verma Committee on age of consent.

4- To compare India's approach with international approach, many of which include close-in-age exception or sometimes often referred as "Romeo and Juliet clause."

5-To suggest reforms that strike a balance between protection of minors and adolescent autonomy.

2-Concept of age of consent in law:

The term *age of consent* refers to the age at which a person is competent to give valid consent for sexual activities. Involvement in any sexual activity with anyone below this age is an offence under law and is punishable even though the minor claims consent. In short, law assume that anyone below the age of 18 years lacks psychological, emotional and intellectual maturity to make s well informed decision regarding such sensitive matters.

There are mainly two reasons for introducing the concept of age of consent:

a-To provide protections to minors from early exposure to abuse and sexual exploitation.

b-To draw a clear legal line so that court can prosecute offenders without uncertainty about whether the consent was genuine or forced.

This structure provides both the protective mechanism for minors as well as enforcement framework for the law.

Historical evolution of age of consent in India:

- **During the colonial era (1860-1890):** The age of consent for girls was fixed at 10 years

in the initial Indian Penal Code 1860. The sexual intercourse with one's wife were not considered rape unless she was below the 10 years of age. There comes an amendment in the age of consent after the tragic *Phulmani Dasi* case (1889)³ in which an 11 years old child-bride died after her 35 years old husband forced intercourse for which her husband was convicted only for "causing grievous hurt by act endangering life or personal safety of others" under section 338 of IPC. This case is also known as *Empress v. Hari Mohan Maiti*.

- **Age of consent act ,1891:** The Age of Consent Act 1891⁴, also known as Act X of 1891 which raised the consent age from 10 to 12 years for sexual intercourse for all married or unmarried girls and its violation subject to criminal prosecution as rape. Although it was a good reform but still strongly opposed by conservative Hindu groups as interference with Hindu traditions.
- **Amendment of 1925 and 1940:** The amendment of 1925⁵ raised the consent age to 14 years and 1940s⁶ amendment further raise it to 16 years. This remained the norm still Independence.
- **Post Independence reforms in age of consent (1947-48): The Child Marriage Restraint Act, 1929⁷** also known as **Sharda Act** that fixed the minimum age of marriage for girls at 14 years and boys at 18 years was amended in 1949 after India's independence to fix the age of marriage at 15 for girls, and later at 1978 at 21 for boys and 18 for girls. At this stage the age of consent was still 16 years.

The Present Era (2012 onwards):

a-POCSO Act 2012: For the first time, the law defined the term *child* as anyone below the 18years, thereby fixing the age of consent at 18 years. This act provides comprehensive framework for child protection. Any sexual activity involving anyone below this age amounts to statutory rape, regardless of consent.

³ *Queen Empress v Hurree Mohan Mythee* (1890) ILR 17 Cal 49.

⁴ Age of Consent Act 1891 (Act X of 1891).

⁵ Indian Penal Code (Amendment) Act 1925 (Act XXIX of 1925).

⁶ Criminal Law (Amendment) Act 1940 (Act XX of 1940).

⁷ Child Marriage Restraint Act 1929 (Act XIX of 1929).

This progression illustrates how the law gradually provides more protection to minor, often in response to court decisions, social traditions and international protocol.

b- The Criminal Law (Amendment) Act, 2013⁸: enacted after the *Nirbhaya case*, raised the age of consent in Indian Penal Code to 18 years, aligning it with the international convention named **UN Convention on the Rights of Child (UNCRC)** which defines anyone below 18 years as a child.

c- The 2018 Amendment to POCSO: placed greater emphasizes on punishment than prevention. It introduced stricter punishments and penalties but retained the age of consent at 18 years disregarding the call for reform. Experts including Justice Verma Committee which had recommended lowering the consent age at 16 with appropriate precautions and safeguards.

3- Provisions under POCSO Act regarding age of Consent:

Overview of POCSO'S Legal Framework

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted as an extensive legal structure to safeguard minors from sexual offences. POCSO is gender-neutral act, applies to all minors below 18 years, and penalizes a wide range of conduct beyond rape.

The offences in this act are very specifically defined, ensuring no ambiguities for offenders to escape justice. It criminalizes involvement in any sexual activity with anyone under the age of 18 years, even if the minor claims consent. Such consent is irrelevant in the eye of law and such sexual activity automatically classified as offence.

Sections related to sexual offences against minors (Sections 3-10):

There are wide range of provisions given in the POCSO act, which can be categorized into penetrative offences, non-penetrative offences and aggravated forms.

a-Penetrative offences (sections 3-4): **Section 3** of the said act define the term “penetrative sexual assault.” It includes:

- Penetration of penis, object, or any body part into the vagina, mouth, urethra or anus of

⁸ The Criminal Law (Amendment) Act 2013.

a child.

- Manipulation of any body part to cause penetration.
- Application of mouth to private parts.

Section 4 of the said act prescribes punishment for the said offence: imprisonment of either description for a term not less than 10 years but may be extent to imprisonment for life, plus fine.

But if such offence is committed with the child below 16 years, then punishment shall be imprisonment of not less than twenty years but which may be extend to imprisonment for life and also liable for fine. (added by 2019 amendment)

b- Aggravated penetrative sexual assault (Section 5-6):

Section 5 lists down the circumstances where the assault is aggravated, such as when committed by:

- By a teacher, police officer, relative or person in authority.
- On a child who is below the age of 12 years.
- Repeatedly or during communal/armed conflict.

Section 6 expressly says that if anyone who is guilty of such offence shall be punished with rigorous imprisonment of not less than 20 years and which may be extend to imprisonment for life and shall also liable for fine, or after 2018 amendment, for death in certain cases. (added by 2019 amendment)

c- Sexual Assault (Section 7-8):

Section 7 defines sexual assault as any act done with sexual intent, without penetration, which involves physical contact (for ex- groping)

Section 8 states that anyone who commits sexual assault shall be punished with the imprisonment of either description for the term which is not less than 3 years but which may

extend to 5 years and shall also liable with fine.

d-Aggravated Sexual Assault (Section 9-10)

Section 9 of the said act listed down the aggravated form of sexual assault.

Section 10 prescribes punishment for such aggravated offence i.e. imprisonment of either description for a term which shall not be less than 5 years but which may extend up to 7 years, and also liable for fine.

These provisions are extensive in penalizing all sexual acts against minors. However, because the act considered anyone below 18 (section 2d) as a child, the law automatically applies to all adolescents, regardless of their consent.

Effect of 2018 amendment and its Impact:

The 2018 amendment to The Protection of Children from Sexual Offences (POCSO) Act part of the broader Criminal Law (Amendment) Act 2018, was direct response to the public and national outrage after the series of horrific cases of child rape. It includes the following changes:

1-Enhanced Minimum Sentences: For example, in Section 4 of POCSO Act the punishment increased from 7 years minimum to 10 years.

2- Death penalty for aggravated cases: Section 6 of POCSO which deals with penetrative assault on children under 12 years of age now also allows for death penalty as punishment.

3- Widened scope of offences: provide stronger framework against offences like child pornography and impose harsher penalties for repeat offenders.

Impact of these changes:

Positive Impact: The amendment of 2018 strengthen prevention, created rigorous sentencing guidelines and provide with zero tolerance policy against sexual offences with respect to children.

Negative Impact: It ignores the call for introducing reforms such as close-in-age-exception,

thereby criminalizing the consensual relationships among adolescents.

For example: A 16-year-old boy in a consensual relationship with a 16-year-old girl could face criminal charges under section 3-6 of POCSO Act if the relationship involved sexual activity. Even if the girl claim consent, such consent is of no value in the eye of law.

This has resulted in a spike in the number of POCSO complaints filed by parents against the partner of their daughter's, particularly in cases of inter-religious or inter-caste relationships.

Effect of Absence of Close-in-age provision:

The law in India does not acknowledge adolescent romance as a separate category. In contrast to India many countries have a "Romeo or Juliet" or "close-in-age" clause. India law penalizes all sexual activity involving anyone below 18 without exception.

Consequences of this absence:

1-Criminalization of consensual adolescent relationships: Adolescents having consensual relationships are often dragged into criminal trials.

2-Misuse by parents: Families disapproving inter-caste or inter-religion relationships often file false cases using POCSO provisions.

3- Burdening of courts: Such false cases lead to unnecessary burdening of courts, diverting their attention from genuine matters.

4-Violation of Right: This absence also violates personal liberty, dignity and autonomy of adolescents.

Legal Consideration:

High courts in India flagged this issue many times through their rulings:

- *In Vijayalakshmi v. State (2021, Madras HC)*⁹, the court strongly urged the reconsideration of consent age. The judges observed that criminalizing consensual

⁹ *Vijayalakshmi v State* 2021 SCC OnLine Mad 2345

relationships is counterproductive and harms the very children the law aims to protect.

- Similarly in *State v. Jitendra (Delhi HC, 2019)*¹⁰, the court acquitted an accused in a consensual relationship, highlighting that such cases “defeats the purpose of law.”
- These judicial decisions highlight the gap between the law on paper and its actual practice in reality.

Conclusion to Section 3

The POCSO Act (section 3-10) along with the criminal amendment of 2018, provide a rigorous protective framework against sexual offences. However, the general rule of 18 years, without any exception, has resulted in unexpected results- most notably the criminalizing of consensual adolescent relationships. The absence of close-in-age clause remains a glaring shortcoming that diminish the law’s efficiency.

Section 4 – Reason behind keeping the age of consent at 18 years

Child protection goal and legislative intent

When lawmakers fixed the age of consent at 18 years, their main goal was child protection. The aim of the statute was not to criminalize consensual adolescent relationships but to provide with a clear, uniform, protective norm for protecting minors from sexual exploitation. There are several reasons that support this decision i.e.-

1-Alignment with International Commitment:

India is a signatory to **the United Nations Convention on the Rights of the Child (UNCRC), 1989**¹¹, which defines anyone below the age of 18 as a child, India aligning municipal law with international obligations, thereby avoiding possible objection for under-protection of children.

2-Consistency with other domestic laws:

Under **the Child Marriage Restraint Act, 1929**(later replaced by the Prohibition of Child

¹⁰ *State v Jitendra* 2019 SCC OnLine Del 11817.

¹¹ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC).

Marriage Act¹², 2006), the minimum age for marriage for girls is 18 years. Lawmakers reasoned that it would be contradictory to allow sexual consent at 16 years while restricting marriage until 18.

This uniformity simplifies implementation and prevents contrary legal interpretations.

3-Prevention against exploitation:

Lawmakers believed that keeping the consent age higher would prevent the adults from taking advantage of adolescents under the guise of “consensual” relationships. Therefore, the law, presumes that anyone below 18 is not mature enough to give real consent, ensuring adults cannot exploit grey areas.

4-Social and Cultural Concerns:

Indian society has historically been traditional regarding adolescent sexual identity. Lawmakers influenced by dominant social customs, leaned towards rigid protection rather than liberalization. This framework reflects a paternalistic but tradition bound intent to “safeguard” adolescents from what is seen as early exposure to sexual relationships.

Arguments concerning Psychological and Biological Maturity:

1-Biological Maturity:

Biological research shows that puberty typically begins between ages 12-14, with physical maturity often attained by 16-17.

Critics argue that adolescents are biologically mature enough to engage in sexual activity earlier than 18.

2-Psychological and Cognitive Maturity

Neurological studies demonstrate that the prefrontal cortex – the part of the brain which control judgement, impulse control, and risk evaluation – continues developing until the early twenties.

¹² The Prohibition of Child Marriage Act 2006.

This means that adolescents, even if they are biologically mature, may lack the psychological ability to judge risks and long-term effects of sexual activities. Therefore, lawmakers choose to be cautious by fixing 18 as the minimum age.

3- Vulnerability of adolescents:

Adolescents are more susceptible to social influence, exploitation by adults and deceptive practices. By fixing higher age of consent, the legislators aimed to provide protection to the adolescents against the sexual exploitation by older predators.

Legislative intent: Balancing safeguard vs Autonomy

While the committee of Justice Verma and many scholars recommended 16 years with safeguards, Parliament choose 18 years without exemptions. This preference by parliament reveals a cautious statutory philosophy:

- The priority was on child protection over adolescent independence.
- Parliamentarians feared that lowering the consent age or introducing close-in-age clauses might create scope for misuse by older offenders who could easily claim consent.

Criticisms of legislative rationale:

Despite these justifications, many scholars and judges oppose the rigid 18-year rule:

1-Over-Criminalization

By ignoring consensual adolescent relationships, the law penalizes normal adolescent conduct.

2-Misuse by parents

Families often use POCSO to control their daughter's choice, especially when it comes to inter-caste or inter faith relationships.

Conclusion to section 4

The decision to fix 18 years as the age of consent reflects statutory caution, child protection

goals and social conservatism. It aligns with international obligations but creates domestic strain between law and adolescent rights. While biological maturity occurs earlier, legislators preferred psychological immaturity and susceptibility as grounds for rigid protection.

The question remains: does the paternalistic manner truly protects the adolescents or punish them for growing up?

Section 5 – Recommendations Made by Justice Verma Committee¹³

Background of the committee

On December 23, 2012 a three members committee headed by Justice J.S Verma, former chief justice of Supreme court was constituted to recommend amendments to the present criminal laws and to suggest reforms to ensure the protection and dignity of women as well as children. This committee was set up after the gruesome Delhi gang-rape-case popularly known by the name of Nirbhaya Case. Other members on the committee were Justice Leila Seth, former judge of High Court and Gopal Subramaniam, former Solicitor General of India.

Committee's view on Age of Consent:

One of the major questions before the committee regarding age of consent is whether to keep it at 18 years or to lower it to 16 years (as under IPC pre2013)? After extensive discussion, the committee recommended the following:

1 – To retain the age of consent at 16 years

- The committee argues that keeping the minimum age at 16 years would strike a better balance between protecting children from exploitation and respecting adolescent liberty.
- It observed that many adolescents between 16-18 are involved in consensual relationships, and criminalising them would be adverse.

¹³ Justice J S Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India 2013).

2- To introduce safeguards against exploitation

The committee recommended that even if the age remained at 16, courts and investigators should properly inspect whether the consent given was voluntary or forced through coercion, manipulation, or oppression.

3- Introduction of close-in-age clause

The committee, though not expressly using the term, indicated through its reasonings that it supported a close-in-age exemption to protect young couples from harsh prosecution.

4- Protection vs. Autonomy

The committee observed that the law should not be used as a tool to police adolescent sexuality. Instead, its primary role should be to tackle and penalize cases of genuine exploitation and abuse.

Evaluation of the recommendations

Strengths of the recommendations

- **Practical recognition of adolescent conduct:** The committee acknowledged that consensual sexual activity among 16-18-years-olds is a social existence.
- **Curbing misuse:** By recommending a lower age and protections, it sought to reduce misuse of POCSO by authorities or parents against adolescent relationships.
- **Alignment with global patterns:**

Many countries like (eg.UK, Canada, Australia etc) set age of consent at 16, with exemption for close-in-age companion. The committee's view was therefore aligned with global trends.

Child Rights Approach:

Instead of treating adolescents purely as “vulnerable” the suggestions reflected a rights-based framework that considered their evolving capacities.

Concerns raised by critics:

- **Risk of exploitation by adults:** Opponent feared that lowering the age might encourage adult perpetrator, who could exploit adolescents into “consenting.”
- **Cultural Conservatism:** Indian society, being largely traditional, viewed 16 as “too low” given that marriage was legally prohibited until 18.
- **Execution Challenges:** With lacking sex education and awareness, opponents argued that adolescent might not be qualified to make informed choices even at 16.

Why the committee recommendations were rejected:

Even though the committee gave strong recommendations, Parliament rejected the proposal and fixed the age of consent consistently at 18 years in the Criminal Law (Amendment) Act, 2013. Following factors explain this:

1-Public outcry for rigid laws

- After the gruesome incident of Delhi gang-rape case (popularly known as Nirbhaya case), there was immense demand for rigid punishments and stronger safeguards, not relaxation.
- Legislators feared public resistance if they were seen as “lowering” protection standards.

2-Intention for Uniformity with POCSO

- The POCSO Act was already enacted in 2012, fixing the age of consent at 18. Lowering it in IPC would have created conflict and legal ambiguity.

3- Political Conservatism

- Given the vulnerability of adolescent sexuality in Indian society, legislators adopted a cautious, protectionist strategy.
- Many believed lowering the age would encourage the adolescent sexual activity a

socially controversial issue.

Consequences of rejection

Following are the consequences of not complying with the recommendations of the Justice Verma committee:

- **Criminalization of adolescent relationships:** Thousands of adolescent consensual relationships (16-18) are prosecuted under POCSO per year.
- **Legal dilemma:** Courts are forced to treat consensual adolescent relationship as offences, even when evidence demonstrates that the relationship was voluntary. A significant portion of reported POCSO cases involve consensual relationships, thereby increasing the burden on judicial system.
- **Contradiction with global practices:** India remains tougher than most democracies, where 16 is the benchmark.

Conclusion to section 5

The Justice Verma Committee strived to establish a balance by suggesting 16 years with safeguard, but its recommendations were rejected in favour of a stricter 18-years old benchmark. While Legislature's reasoning was grounded in safeguard and uniformity, opponents argue that it ignored both adolescent autonomy and comparative global approach.

Section 6- Impact of age of consent on adolescent relationships

Criminalization of Consensual adolescent relationships

One of the most contested outcomes of fixing consent age at 18 years under POCSO is the penalization of consensual adolescent relationships. While the intent of the legislation was to safeguard minors from exploitation, it has dragged many adolescents into the criminal law system.

According to NCRB's "**Crime in India**" Reports¹⁴ most of the victims under POCSO act are

¹⁴ National Crime Records Bureau (NCRB), *Crime in India Reports* (2019, 2020, 2021, 2022).

between the age group of 16-18 and many of them are in consensual relationship with the accused. In such cases complaints are often filed by the opposed parents, not the victim themselves. Thus, the legislation is gradually used as instrument of social control, especially in cases of inter-caste or inter-faith relationships.

The issue lies in the strict liability nature of POCSO. Once the age of informant is below 18, consent becomes immaterial, leaving courts with no adaptability. This inadaptability unreasonably punishes adolescent boys, who often face extended trial and confinement despite the relationship being consensual.

Misuse of the legislation by families

Families often use POCSO provisions to manage adolescent sexual identity or to establish control over their daughter's choices. Sometimes parents who, disapprove of relationships mainly because their daughter's partner is inter-caste or inter-religion, invoke POCSO against the boy, regardless of their daughter's consent.

In some cases, complaints are filed when a girl elopes or marry with her partner against her parents' desires. As a result of such incidents, the law which is meant to provide protection to children against exploitation, becomes a tool for social coercion.

Case study:

Vijayalakshmi v. State (Madras High Court, 2021)¹⁵

In *Vijayalakshmi v. State*, CrI.O.P.No.232 of 2021 (Madras HC, 1 February 2021), the Madras high court dealt with a situation where a 23-year-old man was charged under Section 366 IPC, Section 6 of the POCSO Act, and the Prohibition of Child Marriage Act (PCMA) for being in relationship with a minor girl of 17 years. The girl testified that her relationship with the boy was consensual and she objected against her parents' complaint.

Justice N. Anand Venkatesh, while exercising the court's inherent power under section 428 Code of Criminal Procedure, set aside the criminal proceedings and made a substantial observation that:

¹⁵*Vijayalakshmi v State* 2021 SCC OnLine Mad 2345.

“Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender was never the objective of POCSO Act.”

This case is necessary because it shows the misuse of POCSO Act by families, against consensual relationships between teenagers. The judgement stressed the main goal of POCSO Act is to safeguard minors from exploitation not to criminalise consensual relationships.

Through this case the court urged the legislators to reconsider the age of consent, emphasizing the misuse of law in criminalising consensual relationship among teenagers.

Effects of Criminalization

1-Marginalisation of adolescents

Due to the criminalisation of adolescent relationships, young boys often face arrest, trial and even detention, leading to stigma, interrupted education and psychological damage.

In cases of young girls, though not criminalised, they often face parental criticism, forced marriage or withdrawal from education.

2-Burden on Judicial System

When courts are filled with false cases of consensual relationships, genuine cases of sexual exploitation often get ignored and delayed. This weakens POCSO's validity and effectiveness.

3- Violation of adolescent autonomy

The present legal system under POCSO does not appropriately recognise the evolving capacities of adolescents. By penalising all forms of sexual conduct below 18, the law neglects cognitive development of adolescents and their ability to assert autonomy.

This perspective is inconsistent with Article 5 of the UN Convention on the Rights of the Child (UNCRC), which mandates states to respect the duties of parents and guardians while acknowledging the evolving capacities of the child in practicing autonomy. Furthermore, it conflicts with Article 21 of the Constitution of India which safeguards right to life and personal liberty.

Conclusion to section 6

The following are the impact of age of consent clause on the consensual relationships:

- 1-Unecessary criminalisation of relationship between adolescents.
- 2-Misuse of age of consent clause by families as an instrument to establish control.
- 3-Unecessary burdening of courts with false cases of POCSO.
- 4- Violation of personal liberty and autonomy of adolescents.

Section 7 – Analysis of key judicial precedents and law commission report no 283

Case study: Nipun Saxena v. Union of India (2018)¹⁶

Facts of the case: In this case the public interest litigation was filed to protect the rights and dignity of children who were the victims of sexual exploitation. In this case the Hon'ble supreme court analysed provisions of POCSO Act, 2012 and other related laws, emphasizing on anonymity and safeguarding of victims.

Issue: The main issues **was** to check whether India's legal model under POCSO Act sufficiently provides protection to the minors against exploitation, while also considering challenges like the criminalisation of consensual relationship between adolescents.

Judgement: In this case following are the points that court held-

The court did not change the consent age, fixing it at 18 years, as fixed under POCSO and recommended the parliament to reconsider the age of consent clause or to introduce close-in-age exception through legislation. Through this ruling the court emphasizes more on victim protection, holding that:

- 1- The identity of the victim should never be disclosed (Section 23 POCSO)
- 2- All trials should be conducted on camera with child appropriate procedures.

¹⁶ *Nipun Saxena v Union of India* (2019) 2 SCC 703.

- 3- States must ensure counselling, compensation and rehabilitation facilities for child victims.

Amicus curiae suggestions: In the above case the amicus curiae, senior advocate of Supreme court **Indira Jaising** state the following:

- 1- To lower the consent age from 18 to 16 years or to introduce a close-in-age exception, in order to prevent unnecessary criminalization of consensual relationships.
- 2- She emphasized that the goal of the criminal law must be to provide protection against exploitation, not to target teenage relationships.
- 3- She further stressed the need to recognise evolving capacities and autonomy of adolescents. Her recommendations were in line with the global trends and Justice Verma's committee suggestions.

Significance: While the court strengthen strict protection of child victims, their privacy and dignity, it did not take up the amicus curiae recommendation on age of consent. This left the debate open for legal re-evaluation, emphasizing the ongoing tension between child safeguard and adolescent independence in India.

Law Commission report no. 283 (2019-21)¹⁷

On 27th September 2023 the Law commission of India publishes its 283rd report named "Age of consent under the Protection of Children from Sexual Offences Act 2012 (POCSO)." As the name suggests this report is on the issue whether the current legislation needed reform like close-in age exception or not.

Observations made under this report:

1-Criminalisation of consensual adolescent relationships: As per the courts and NCRB data a considerable proportion of POCSO proceedings involved consensual adolescent relationship aged between 16 to 18 years.

2-Misuse by families: The commission recognised that most of the complaints under POCSO

¹⁷ Law Commission of India, *Report No 283: Age of Consent under POCSO Act* (Government of India 2021)

often invoked by parents to punish inter-caste or inter-faith relationships.

3-Psychological and biological maturity:

It is observed that adolescents between 16-18, while not fully biologically mature, possesses developing ability and must be treated differently from young children.

Recommendations:

1-The commission rejected the plea for lowering the consent age, citing India's international liability (UNCRC) and risk of misuse by older predators.

2-The commission strongly recommended for the introduction of reform like close-in-age exemption for decriminalisation of consensual relationships.

Gaps and criticism

1-The report did not mention any clear age gap (for ex- 2-3 years), leaving scope for uneven application.

2-The present POCSO Act has not amended by the parliament yet, so the suggestions remain unimplemented.

3-Granting discretion without any proper legal guidance could produce vague judgements.

4-Critics of the report argued that the report should focused more on India's social realities rather than primarily adhering to UNCRC.

Conclusion to section 7

In conclusion to section 7, we find that both the courts and law commission agreed on the same point: the present POSCO Act has over criminalized the adolescent relationships. Both have proposed reforms like a close-in-age exception, but without proper legal framework, the law continues to compromise justice and adolescent autonomy.

Section 8- Comparative Perspective

United Kingdom

- In the UK, the age of consent is fixed at 16 years¹⁸ (Sexual Offences Act, 2003). Any sexual activity below this age is illegal, but the consensual activity between adolescent is hardly penalised. If any offender is in a position of trust such as a teacher or guardian, then sexual activity with a person under 18 years is illegal.
- **Lesson for India:** Striking balance between legal protection and adolescent autonomy can prevent unnecessary criminalisation while still penalising exploitation.

United States

- In the US, the age of consent varies from state to state usually falls between 16 to 18 years¹⁹. Many states have “Romeo and Juliet” clause which exempt consensual relationships from criminalisation, when the age difference between partners is small (mostly 2-4 years).
- **Lesson for India:** US state distinctions present flexibility in law. Reforms like close-in-age exceptions prevent consensual relationships from being criminalised.

Australia

- In Australia the age of consent is generally fixed at **16 years**²⁰(17 in South Australia and Tasmania), with a close-in-age clause that permits teenagers aged 14-15 to consent if their companion is within two years of their age. In Australia law is more focused on providing protection against exploitation such as coercion, grooming and abuse of trust, rather than criminalising consensual adolescent relationships.
- **Lesson for India:** To emphasize more on protection against exploitation while still respecting the adolescent autonomy.

Germany and other European Jurisdictions

- **Germany:** In Germany age of consent is 14²¹ but with restrictions. Adolescents aged

¹⁸ Sexual Offences Act, 2003

¹⁹ Texas Penal Code (United States), Title 5, Chapter 22.

²⁰ Australian Criminal Codes (varies by state, generally 16 years; South Australia and Tasmania 17).

²¹ German Criminal Code (Strafgesetzbuch, StGB) §§176–182.

between 14-15 may consent unless their partner is above 21 and abusing them.

- **France:** In France age of consent is 15²² which automatically raised to 18 in cases where abuse of power involved.
- **Lesson for India:** European laws show hierarchical model, distinguishing between older minors and young adolescents, with harsher punishment against older offenders.

Conclusion to section 8

India stands out globally for fixing the consent age at 18 with no close-in-age exceptions clause. This reflects India's strong focus on protecting minors but this varies from international practices that recognise both adolescent autonomy and evolving maturities. India can learn from other countries and reform its law that provides both protection against exploitation as well as respect for adolescent autonomy.

Section 9-Criticism and challenges

1-Unnecessary of criminalisation of consensual relationships: The strongest criticism against fixing consent age at 18 is that it criminalises consensual relationships between adolescent. Many reported cases in POCSO involves 16-18 in consensual relationships, yet the legislation treat them as offenders and victims. This blanket rule compromises adolescent autonomy and makes genuine teenager conduct an offence.

2-Misuse of the legislation by parents or families

Many complaints under POCSO Act are invoked by families or parents against relationships they objected to, especially in cases of inter-caste or inter-religious unions.

3-Burden on Courts and authorities

Most of the reported cases under POCSO Act are consensual, which burden courts with false cases and delays trial involves genuine abuse. Due to this, special courts and police authorities are distracted from prosecuting offenders to tackling cases of adolescent love.

²² French Penal Code, art 227-25.

4-Conflict between protection and personal liberty

The consent age fixed at 18 conflicts with Article 21 of Constitution of India (right to life and personal liberty) and Article 5 of United Nations Convention on the Rights of Child (UNCRC) 1989, which deals with evolving capacities. Adolescents who are capable of making sound judgements and practicing autonomy are denied control, creating a conflict between protection and personal liberty.

Conclusion to section 9

The strict framework of POCSO Act regarding the age of consent has led to over criminalisation of consensual relationships, misuse by families, burdening of judicial systems and violation of rights. Without reform, the law risks losing its validity as an instrument for child protection.

Section 10 – Possible reforms and recommendations

1-Introduction of close-in-age exception clause: The first reform that the law is in need of the introduction of close-in-age exception clause to prevent overcriminalisation of consensual relationships between adolescents. This would ensure that any consensual sexual conduct between adolescents is not treated as an offence.

2-Strengthening Investigating authorities: Even with a close-in-age exception, cases must be carefully investigated. Police authorities and investigators should be trained to differentiate consensual relationships from exploitative conditions.

3-Awareness and extensive sex education: With legal reforms, awareness regarding sex education among particular age group is required. Adolescents need accurate knowledge about sexuality, consent and safe practices. Parents, communities and schools must be aware to reduce the social stigma around adolescent. This will reduce dependency on law and enable adolescents to take informed decisions.

4-Judicial protection: Special courts constituted under POCSO Act should be enabled to dismiss unnecessary cases quickly to avoid unnecessary delay in trials.

- **Victim compensation schemes** should be strengthened for legitimate cases of abuse, assuring resources are not wasted on consensual cases.
- **Parliamentary committees or Law Commissions** must conduct periodic review to evaluate the working of age of consent laws in practise.

5-Legal Reform Pathways:

Parliament could amend the present POCSO Act and introduce a close-in-age clause, while retaining 18 as the general limit.

- A **structure model** could be considered:
- For age limit 0-14 years: absolute prohibition on any type of sexual conduct for protecting young children from exploitation.
- For 14-16 years: Sexual activity is still prohibited, but exemptions are allowed in cases of consensual relationships and the partner is close in age (with a gap of 2-3 years). This prevents criminalisation of consensual relationships while still protecting minors from exploitation by older offenders.
- For 16-18 years: Sexual conduct can be considered consensual, but if the partner is much older (like 21 or above), or there is a doubt that there is exploitation such as manipulation, grooming or abuse of authority then it must be treated as an offence.

Conclusion to section 10: The age of consent law in India has been competent in reinforcing child protection, but its strictness has led to inadvertently caused harm for adolescents. By embracing reforms like close-in-age exceptions, broader investigative authority, and a focus more on exploitation rather than age alone, law remain both protective and justifiable.

11- Conclusion: The issue of age of consent under POCSO Act sits at the intersection of law, society, and adolescent autonomy. Implemented with noble goal of protecting children from exploitation, the act reflects India's undertaking to the United Nation Convention on the Rights of the Child (UNCRC) and its national child protection structure. By fixing the age of consent at 18, the law aims regularity and maximum protection. However, the strict application of this limit has created new challenges.

Throughout this research, it has become evident that the **over-criminalisation of consensual relationships** among adolescents is one the most critical dilemmas. Instead of emphasizing solely on exploitation and abuse, the legislation ends up punishing adolescents involved in consensual relationships. Indian courts have recognised this issue, observing that POCSO is often used as a tool against consensual teenage relationships. The law commission also acknowledged this issue in its 283rd report and also suggested reforms like introducing a close-in-age exception.

Comparative experiences from countries like Canada, UK, US etc shows that protection can be maintained together with acknowledgement of adolescent autonomy through close-in-age clauses and structured consent models. The Justice Verma committee has already foreseen this issue and recommended to retaining 16 years as the age of consent with safeguards, but Parliament rejected the proposal.

Introducing reform like close-in-age exceptions or tiered consent models would help the law to focus more on exploitation of children rather than teenage love. The aim of the law should be to provide protection to the vulnerable along with respecting the evolving capacities of the adolescents.