
ANALYSING THE CONSTITUTIONAL LIMITS ON ADOLESCENT AUTONOMY IN THE EVOLVING SOCIETY THROUGH THE LENS OF POCSO, 2012

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 criminalises sexual activity involving persons below the age of eighteen years. This has sparked debate about adolescent autonomy, consent and evolving capacities between those involved in the activity. Criminalizing all sexual activity in the particular age bracket is seen as a means to protect vulnerability, but it renders exploitative conduct indistinguishable from consensual and non-coercive conduct. In the 21st century the judiciary is witnessing many cases in which misuse of such provision is rampant. This paper seeks to analyze the provisions of POCSO from the lens of the Indian Constitution with respect to Article 21. It further examines the close-in-age provisions leading to a comprehensive comparison of similar laws and practices followed in other countries to evaluate alternative regulatory approaches which establish the difference between exploitative sexual activity and consensual conduct.

Introduction

The Protection of Children from Sexual Offences Act, 2012¹ establishes a strict framework for protecting children from sexual abuse. The objective of the parliament when drafting this comprehensive legislation was to form a robust, and victim sensitive framework, it prescribes eighteen years as age of consent and treats consent as legally irrelevant in cases involving minors. The provisions ensure that exploitative conduct does not escape punishment under the guise of consent and prevents retraumatization of victims. While the statute seeks to prevent exploitative practices like coercion under claims of voluntariness, it is quite evident that it seeks to prioritize certainty and deterrence over contextual inquiry. However, this uniformity is precisely the reason for structural tension. A recurring category of prosecutions are based on consensual romantic relationships between adolescents close in age, wherein allegations of abuse, force, manipulation are absent. In many such cases the initiation of complaint is registered by disapproving parents rather than the minors involved. A law made to prevent sexual abuse becomes a weapon to pressurize teenagers and leaves no room for considerations like age proximity or even factual nuance. The question this paper aims to examine is whether the blanket criminalization of adolescent romantic relationships under the guise of POCSO without regard to consent or age proximity or any distinguishing factors from exploitative conduct to voluntary intimacy is the appropriate manner of application of this law.

The Indian Constitution interprets Article 21² in a very broad sense affirming that personal liberty encompasses decisional autonomy in matters related to intimacy, choice of partner etc. While it is understood that these provisions are for the people who have attained the age of majority and cannot be applied uniformly to under age children, they should expand to the normative understanding of decision making autonomy as the teenagers who are close to the age of majority find themselves in this web which is accompanied by moral policing from the families and state machinery. The protection of children is unquestionably a very crucial state interest, constitutional doctrine says that the principle of proportionality is to be applied when deciding matters. As the criminal law admits no differentiation between coercion and consensual relationship, it intervenes in consensual relationships between adolescents, it invites scrutiny under the standards of proportionality as such a practice creates limitation on the

¹ *Protection of Children From Sexual Offences Act*, No. 32 of 2012

² *INDIA CONST.* art. 21.

fundamental rights granted by the Constitution which is the supreme law.

The absence of age-proximity considerations and the categorical exclusion of consent in some contexts may result in disproportionate state intervention, which makes it a constitutionally significant concern. The paper seeks to clarify the limits of protective legislation by analysing the statutory framework of POCSO and the concept of strict liability embedded within it with the principle of proportionality.

Statutory Framework

The Protection of Children from Sexual Offences Act, 2012

The Act was enacted to strengthen the laws addressing sexual offences against children. In the absence of POCSO, such offences were prosecuted under Indian penal Code, which had many problems like evidentiary challenges, definitional gaps and limited gender neutrality which made the effective enforcement challenging. POCSO sought to remedy these deficiencies through a special act aimed at combating child sexual abuse, it marked a deliberate shift towards a strict and protective child-centric legislation.

The Age of Consent

The age of consent means the age when a person is considered capable of consenting to sexual activity. Initially, the age of consent was fixed at 10 years which was raised through legislative actions several times to 12 and then 16 years.

The Criminal Law (Amendment) Act, 2013³ changed the age to 18 years forming a uniform benchmark of legal incapacity of providing consent.

Section 2(d) of POCSO defines any person below the age of eighteen years to be considered a “child”. There is no bifurcation between early childhood and late adolescence, nor does it bifurcate on the basis of maturity or age-proximity between the parties.

The legislature has adopted a strict rule by fixing the age at eighteen, given that it promotes clarity and ensures justice is served but it also eliminates contextual assessment in the process. As the law blindly presumes that minors lack capacity to provide consent, considering the new

³ *The Criminal Law (Amendment) Act, 2013*, No.13 of 2013

Lady Justice has her eyes not blindfolded, it is high time we take serious measures to resolve this issue.

Relevant Cases

Independent Thought v. Union of India⁴

The Apex court in this case harmonized IPC⁵ with POCSO and affirmed that 18 years of age is the constitutionally accepted threshold below which consent is legally immaterial. The context is equally important to be taken into consideration but this strict barrier is the problem.

Sabari V. Inspector of Police⁶

The Madras High Court in this case has acknowledged the issue of absence of age-proximity exceptions under POCSO. The fixing of a particular age of majority eliminates the requirement of consent or voluntariness which results in a tension between the facts of the case and the requirements to establish an offence by the legislation.

State of Uttar Pradesh V. Aurudh and Anr.⁷

The Supreme Court in a candid postscript acknowledged the rising cases where consensual adolescent relationships have resulted in prosecutions under the act. The court emphasized on determining the case based on the context and taking into account factors like age proximity between the parties, the nature of the relationship whether consensual or not and the absence or presence of coercion or exploitation. The observations herein reflect the growing judicial awareness of the tension between strict child protection laws and the realities of adolescent relationships.

Lajja Devi V. State⁸

In Lajja Devi, the Delhi High court on its own motion rejected the application of a straitjacket formula in determining cases related to consensual adolescent relationships. It emphasized that

⁴ *Independent Thought v. Union of India* (2017) 10 SCC 800

⁵ *Indian Penal Code, 1860*, No. 45 of 1860

⁶ *Sabari @ Sabrinathan @ Sabarivasan V. Inspector of Police*, Crim A. No. 490 of 2018, 12 (Madras H.C. Apr. 26, 2019)

⁷ *State of Uttar Pradesh V. Aurudh and Anr*, 2026 INSC 47

⁸ *Lajja Devi V. State (NCT of Delhi)*, 2013 SCC Online Del 4288

adjudication should remain sensitive to the age proximity of parties their emotional maturity, family background and presence of coercion, inducement etc.

This reasoning showcases the constitutional sensitivity regarding personal liberty under article 21. Personal liberty can't be curtailed by strict application which could be arbitrary or disproportionate. The “procedure established by law” must be fair, just and reasonable.

Nipun Saxena v. Union of India⁹

The case seriously opined that disclosure of identity of victim in any manner whether through social media, newspaper, investigative agencies is imperishable.

Even senior advocate Ms. Indira Jaisingh¹⁰ as an amicus curiae in the case urged the Apex court to decrease the age of consent from 18 years to 16 years to conform with the growing societal realities. She noted that maturity and capacity to consent should not be ignored.

Legal Consequences

Under Criminal laws, culpability comes with mens rea and harm. Yet, there are certain statutes that operate in strict liability principles. The structure of POCSO is such that even in cases where a minor affirms the voluntary nature of the activity, the statutory elements provided by the act remain satisfied once the minor status is established.

The Delhi High court in the matter of State v. Hitesh¹¹ that involved a minor girl of 16 years who accompanied a boy on her own will and engaged in coitus voluntarily. The court had to determine the case under Section 4 of POCSO against the accused. The trial court acquitted the accused and High court upheld acquittal under the act. The court opined that law should evolve to acknowledge consensual adolescent relationships.

In the case of XYZ v. State of Maharashtra¹² there was consensual relationship and sexual activity among the parties, the prosecutrix herself has affirmed that the sexual activity was with her consent and her family was against the relationship. To what extent would it be justiciable

⁹ Press Trust of India *Nipun Saxena v. Union of India* (2019) 2 S.C.C. 703 (India)

¹⁰ *Bring Down Age of Consent from 18 to 16 Years, Supreme Court Told*, The Hindu (July 24, 2025) <https://www.thehindu.com/news/national/bring-down-age-of-consent-from-18-to-16-years-supreme-court-told/article69850501.ece>

¹¹ *State V. Hitesh*, 2025 Latest Caselaw 1700 Del (Delhi H.C. Jan. 30, 2025)

¹² *XYZ V. State of Maharashtra*, 2025 BHC-NAG:2619

to punish the accused for a minimum period of 7 years under Section 4 of POCSO?

Such cases do not negate the prevalence of exploitative offences that POCSO aims to combat. Nor does it undermine the legitimacy of a strong protective framework. Rather, this exposes the limitations of the statute.

The Act does not take into consideration the consent of a minor. Once the age is established below eighteen years at the time of the alleged act, the accused who may be a young adult or even close to the age of majority is exposed to stringent provisions of the POCSO Act. Depending on the nature of the allegations the act prescribed minimum mandatory sentences which are typically not less than seven years. Provisions for bail is an uncharted territory.

When the criminal law comes into play in situations where exploitation is neither substantiated or alleged, merely determining minority in age triggers severe penal liability and leaves very less scope for judicial consideration of consensual relationships; it eliminates the requirement of consent or voluntariness which results in a tension between the facts of the case and the requirements to establish an offence by the legislation. Such rigidity has significant implications as it leads to criminalization of conduct that may be socially viewed as consensual but is legally treated as sexual assault under the POCSO Act.

Article 21 of the Indian Constitution

The judicial interpretation of Article 21 which guarantees right to life and personal liberty has transformed this guarantee into a repository of substantive rights with respect to the dignity, autonomy, bold integrity, decisional freedom and privacy. The evolution from the A.K. Gopalan's expansive doctrine in the Maneka Gandhi case¹³ laid down the framework for recognizing the fundamental right of life and personal liberty.

The Famous Judgment of the constitutional bench in Justice K.S. Puttaswamy v. Union of India (2017)¹⁴ unanimously affirmed the right to privacy as a fundamental right. It includes autonomy of decision making, sexual orientation and intimate choices. It emphasized that constitutional morality shall prevail over the social morality which is dominated by majority beliefs. The court introduced a structured proportionality test to ensure only reasonable

¹³ *Maneka Gandhi V. Union of India*, 1978(1) S.C.C. 248 (India)

¹⁴ *K.S Puttaswamy V. Union of India*, (2017) 10 SCC (1)

restrictions on privacy are allowed to pass through. This doctrine works on the premise that measures taken for compelling public purpose should remain constitutionally restrained. The least restrictive means to be adopted to maintain a rational distinction between individual rights and social benefits.

Any restriction on privacy has to satisfy three tests i.e establishing the existence of Law, evaluating the legitimate aim of the state and balancing the Proportionality standards.

As for POCSO, the test of legitimate aim is satisfied as child protection is at the forefront of the enactment of POCSO. The problem arises in establishing whether there were less restrictive, alternative means to achieve the objectives. Owing to the absolute nature of the restriction disregards the evolving capacities and the age-of-proximity between consenting adolescents as it brings them under the same lens as that of an adult sexually exploiting a minor. When it is about the Doctrine of proportionality, it is on the courts to determine if the social benefits as secured by the restriction justify the burden imposed.

Relevance to Consensual relationships and POCSO

The Criminal laws are the most coercive aspect of state power, they not merely regulate but have the power to create deterrence and punish the criminal. When seen through the lens of the Constitution, it guarantees the right to protect decisional autonomy and intimate choice. POCSO criminalizes all sexual activity involving persons below the age of majority irrespective of their consent and applies for strict liability once the age is established.

The critical concern is not whether the state can protect minors but whether such blanket criminalization without proper contextual evaluations satisfies the proportionality standard laid down in the judgement.

Which gives rise to the following questions-

- Is the absence of a “close-in-age” or “Romeo and Juliet” exception constitutionally disproportionate?
- The strict penal liability infringes on the decisional autonomy of adolescents near the age of majority?

- Should the state treat consensual adolescent relationships the same as exploitative offence?

The Constitutional perspective here is not if minor's possess rights similar to that of adults. The point is whether the state is allowed to clearly disregard the evolving capacities and decisional autonomy of adolescents close to the age of majority, while criminalizing consensual conduct.

A proper analysis of the constitution must avoid romanticising adolescent autonomy while simultaneously avoiding over criminalization. The law should clearly distinguish exploitation from consensual relationships, it should avoid unnecessary penal consequences in cases in which force or coercion is absent.

Punishment should always be proportionate to culpability, a person should not be punished because the law does not allow people of a certain age to do a consensual act. It is in no way disregarding the values and objectives the POCSO aims to achieve but just trying to set some considerations which should be allowed. States should not adopt an approach that is overbroad when other narrower alternatives are in common parlance. The criminal law cannot become an instrument to enforce cultural discomfort especially when such conduct does not involve abuse of authority, coercion or exploitation. Overbreadth in criminal statutes affecting personal autonomy may render them vulnerable to constitutional scrutiny. As the constitution compels to protect in a manner which is in consonance with dignity and proportionality standards.

Article 14 discussing Constitutional Overbreadth

Article 14 deals with reasonable classification and in recent times constitutional adjudications have examined whether the legislative distinctions are arbitrary and disproportionate in nature.

The age criteria provided in POCSO, 2012 is clear and objective in nature. However, the law should change with changing times, with the increasing misappropriation of this provision, law's failure to acknowledge consensual relationships between consenting adults which are close-in-age may lead to arbitrary consequences which do not fit within the concept of substantive equality. As per the present provisions, the law does not bifurcate between an adult sexually exploiting a child and the consensual sexual act between two adolescents close to the age of majority. Article 14 does not prohibit legislative generalization but in the present

situation a better suited provision would be more reasonable to the nature and gravity of the conduct with reference to criminal liability. Hence, the absence of clear distinction between exploitative conduct and age-proximate consensual activity raise a serious issue regarding over criminalization which may be arbitrary and disproportionate.

Romeo Juliet and Close-in-age exemption

Romeo Juliet clause refers to the romantic consensual relationship between two people. If one of them is a minor and the other person would have reached the age of majority in recent years, such a case may be taken as an exception due to the age gap being very minimal (close-in age exemption) owing to the consensual nature of the relationship. India does not recognize these exceptions statutorily. These provisions emerged in many jurisdictions to address the problem of consensual sexual activity if their age difference falls within a specified limits. These provisions aid in the following ways -

- **Close-in-age** - Sexual activity is lawful if the age difference of the parties is within a defined range and is consensual in nature.
- **Reduced Liability** - Even if statutorily illegal, punishment is reduced, the accused being branded as a rapist can be avoided.

Peer relationships are between adolescents who are developmentally proximate in age and maturity, for example, two teenagers involved in consensual romantic relationships. In such circumstances, the relationship is established on mutual participation, emotional attachment and absence of coercive force. These relationships vary from exploitative situations in which the minor's immaturity or vulnerability makes them prey for sexual gratification, such cases involve manipulation, abuse of trust which absolutely necessitates intervention of criminal laws.

Constitutional Validity of Close-in-age exceptions

A narrowly tailored close-in-age provision could provide a balanced pathway which will retain the strict approach towards exploitative conduct and allow a lean passage for close-in-age consensual activities.

The constitutional validity for this provision does not depend on the factor that it should be an

unrestricted right to sexual autonomy for adolescent minors. A close-in-age exception acknowledges the evolving capacities of adolescents and also allows the state to protect Minor's rights in case of abuse, which clearly reflects the ideology garnered by Article 21. As for Article 14 this approach provides a clear distinction between conduct leading to culpability and harm.

Furthermore, the increase in cases of this nature, mainly arise from parental opposition to adolescent relationships; the law has become merely a means to impose opinion rather than secure the rights of children against exploitation. The existence of close-in-age exemptions in several jurisdictions emphasizes on proportionality, calibrated regulations. Hence, the main issue is not if child protection should come under constitutional purview, it is whether constitutional fidelity allows the fulfillment of the objectives of the act at the cost of over criminalization because the law fails to discriminate between the exploitative and consensual conduct as the only age when a person attains majority and acquires the right to decisional autonomy is they turn eighteen, i.e the age of majority.

International Perspective

The purpose of such exemptions is to promote the interests of the minors. With the evolving society, technological influence and access to social media has allowed children to mature as their physiology develops.

Europe

Country	Age of Consent	Close in age limitations
Germany	14	Conditional protection-sexual activity between 14-15 year olds lawful unless exploitation by person over the age of 21
Switzerland	16	Age difference of less than 3 years
Italy	14	3 Years or less than 3years difference
Spain	16	Exemption exists where both are minors and relationship is consensual

European laws have acknowledged adolescent autonomy. They usually criminalize large age disparities, abuse of authority and any jurisdictions include explicit or functional age-gap protection typically between 2-3 years.

The United States of America

Statutory rape laws are primarily governed at the state level, which result in variations across jurisdiction, close in age exemptions generally range from 2-4 years for the teenagers in the between age of 14-16 to avoid criminalizing teenagers and prevent harsh consequences.

Country	Age of Consent	Close in age limitations
Florida	18	Allows 16-17 year olds with partners below the age of 23
Georgia	16	Allows 4 year or less age gap between 14-16 year olds
Texas	17	3 Year age gap if younger partner is 14 years or below 14 years of age

Asia

Across Asia, the recognition of close-in-age exemption is more fragmented. Many nations criminalize sexual activity with persons below the age of consent irrespective of consent. The Philippines had introduced a three-year close-in-age exemption. The age of consent there is 16 years provided that sexual activity between minors aged 13-16 will not be considered rape if the age difference between parties does not exceed three years and there is no abuse or exploitation.

Country	Age of Consent	Close in age limitations
Phillipines	16	Explicit close-in-age exemption. Sexual activity between minors 16-18 with partners less than 3 years older
Singapore	16	Partial close-in-age exemption. Sexual conduct with minors close in age will not be prosecuted if coercion or exploitation not involved

South Korea	16	Limited recognition of close-in-age relationships. Their laws criminalize sexual activity of minors.
Japan	16	Contextual protection of minors restricting sexual conduct with minors even if above 16 years of age. No clear romeo juliet provisions but practical safeguards in place.

So the Asian jurisdictions demonstrate a transitional landscape, where some states have begun to introduce calibrated safeguards to avoid over criminalization of consensual adult intimacy whereas others continue to emphasize absolute child protection laws to combat exploitation, trafficking and abuse.

Against this backdrop. India under POCSO, 2012 is rigid for its statutory approach, where consent and proximity in age do not operate as mitigating factors. The comparative divergence between Europe, Asia and USA embedded with their cultural ethos showcases an ongoing normative debate within criminal law to reconcile the imperative of child protection with the growing needs of the society.

Safeguards in Implementing Close-in-Age exemptions

Robust safeguards need to be drawn along with close-in-age exemptions to ensure the fundamental objective of protecting minors from sexual abuse remains intact and uncompromised. There should be certain parameters which limit the applicability to consensual relationships between adolescents so that such provision cannot be misused.

The exemption should only apply to individuals close-in-age, typically 2-4 years. This ensures that the protection is limited and based on maturity, age proximity thereby preventing misuse by significantly older individuals manipulating minors in sexual activities and using such provisions to avoid criminal liability.

The exemption must only apply in cases where the relationship is genuinely consensual without any proof of coercion. Exploitation or manipulation. Any evidence of force, threat, deception, abuse should immediately disqualify the operation of exemption.

Moreover, the exemption should not apply to situations which involve positions of authority or trust, such as fiduciary relationships like teacher-student, guardians and wards etc. Basically

the situations which clearly depict power imbalance which may influence the consent of the minor.

Appropriate procedural measures should be put in place to ensure that courts retain discretion to evaluate the factual circumstances of the case like maturity of the individuals involved, the nature of relationship and the presence or absence of exploitative elements.

By incorporating these safeguards, a close-in-age or romeo juliet provision can ensure a stable balance between over criminalization of consensual relationships and exploitation of minors.

Conclusion

The enactment of the Protection of Children from Sexual Offences Act, 2012 was a major move in strengthening protection of children from sexual offences. The act provides stringent measures to safeguard children and punish the offenders.

However, the absolute criminalization model adopted by the law by treating all sexual offences involving persons below eighteen years of age as criminal irrespective of consent, has generated difficult questions in cases involving consensual relationships between adolescents. Judicial observations indicate that a substantial chunk of cases arise from romantic relationships between adolescents ignited by parental disapproval rather than exploitative conduct. In such situations severe provisions of imprisonment may appear disproportionate and may conflict with broader principles of fairness and individual autonomy.

From the constitutional standpoint, the right to personal liberty, dignity, autonomy of decision making under Article 21 has emphasized that every person has the right to choose their partner and right to make decisions with respect to their bodily intimacy. It is understood that a child may not be capable of making decisions for themselves due to lack of maturity but the law should be sensitive to the evolving capacities of adolescents and social realities at present.

Exemptions like Romeo Juliet allow the law to distinguish between exploitative conduct and consensual relationship between minors. Such exemptions accompany basic safeguards to ensure the purpose of the law remains uncompromised and does not do injustice to the innocents.

The Indian laws at present lack such a framework resulting in a very strict and rigid statute that

inadvertently criminalizes consensual romantic relationships. Reforms in this area need to be approached with high caution as there is a thin line but this thin line has ruined the lives of many innocents a prosecutions under POCSO directly harm the reputation of the accused and even their family members in the society and no acquittal can bring back the reputation once lost. In Indian society reputation is considered invaluable and over-criminalization leads to injustice. Hence, a close-in-age provision incorporating strict safeguards against coercion, exploitation and abuse of authority could aid in achieving a balanced stance. As such calibration would keep the core objectives intact and ensure that criminal law remains proportionate and aligned with the rights enshrined in the Constitution.