
CRIMINALISING ADOLESCENT ROMANCE UNDER POCSO: CONSTITUTIONAL MORALITY, CONSENT, AND INTERNATIONAL CHILD RIGHTS STANDARDS

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ABSTRACT

An exhaustive legal framework was introduced to safeguard children from sexual abuse, exploitation, and harassment by the enactment of the Protection of Children from Sexual Offences Act of 2012 (POCSO). Though the statute was a remarkable historic step to guarantee children oriented legal remedies and accelerate the prosecution of sexual offenses against minors, still led to numerous constitutional and doctrinal challenges, mostly when it involves cases concerning consensual adolescent romantic relationships. The criminalization of mutually consenting adolescent relationship raises serious concerns regarding proportionality, constitutional morality, and human rights compliance.

This paper looks closely at POCSO's statutory design, judicial interpretation, and the impact of absolute age-based incapacity on adolescent autonomy. It digs into constitutional law on the right to privacy, right to life with dignity, and sexual autonomy, as established by the Supreme Court in various landmark judgements. The study considers the idea of proportionality under Article 21 and evaluates the law in light of India's obligations under the United Nations Convention on the Rights of the Child (UNCRC), including the principles of developing capabilities and child involvement. Using comparative viewpoints from the US, UK, Canada, and South Africa, the paper would demonstrate how close-in-age exclusions and graded consent strike a compromise between adolescent agency and child protection.

The article also concludes that a calibrated reform that includes close-in-age exclusions and distinguishes between exploitative and consenting behavior will bring POCSO in line with constitutional morality, international child rights standards, and global best practices. This change would maintain the statute's protective purposes while eliminating the unintended criminalisation of adolescent relationships.

Keywords: POCSO, Adolescent Romance, Consent, Constitutional Morality, United Nations Convention on the Rights of the Child, Close-in-Age Exemptions, Sexual Autonomy, Comparative Law

I. Introduction

The criminal law governing sexual conduct involving minors in India underwent a significant transformation with the enactment of the Protection of Children from Sexual Offences Act, 2012 (POCSO). Designed as a specialised statute addressing child sexual abuse, the legislation introduced stringent provisions aimed at safeguarding individuals below eighteen years of age from sexual exploitation, harassment, and assault. The Act criminalises a broad spectrum of sexual conduct and adopts a strict liability approach whereby consent of a minor is rendered legally irrelevant.¹ While this approach was justified as necessary to protect vulnerable children from exploitation, its application has generated complex legal and constitutional concerns when applied to consensual relationships between adolescents.

The rigid statutory framework of POCSO has produced a paradox in contemporary Indian criminal jurisprudence. In numerous cases across various jurisdictions, adolescents engaged in consensual romantic relationships have been prosecuted under the Act, often following complaints filed by parents or guardians disapproving of such relationships.² This phenomenon has led to the prosecution of teenage boys—sometimes only marginally older than their partners—for offences carrying severe penalties including long-term imprisonment. The consequences extend beyond individual criminal liability, affecting the broader goals of child protection and justice administration.

The tension between child protection laws and adolescent autonomy has become increasingly visible within judicial discourse. Indian courts have repeatedly encountered cases where the factual matrix reveals a consensual romantic relationship between individuals of similar age rather than exploitative sexual conduct. In such situations, strict application of POCSO has appeared disproportionate and inconsistent with the principles of fairness and constitutional morality.³ Judicial responses have ranged from strict enforcement of statutory provisions to creative interpretive strategies aimed at preventing injustice.

The issue is further complicated by the constitutional transformation that has occurred in Indian

¹ The Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d), India Code (2012).

² Ministry of Women and Child Development, *Study on the Working of Special Courts under the POCSO Act, 2012* (Government of India 2019); Enakshi Ganguly Thukral, *Children and the Law: The Protection of Children from Sexual Offences Act*, 54 *Econ. & Pol. Wkly.* 45 (2019).

³ *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 8933 (India); *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 2623 (India).

jurisprudence over the past decade. Landmark decisions of the Supreme Court have emphasised the centrality of autonomy, dignity, and privacy as foundational constitutional values.⁴ These developments have reshaped the understanding of personal liberty under Article 21 of the Constitution and have expanded the scope of individual choice in matters relating to intimate relationships. Against this backdrop, the criminalisation of consensual adolescent romance raises serious questions about the compatibility of POCSO with constitutional guarantees.

From a comparative perspective, several jurisdictions have recognised the necessity of distinguishing between exploitative sexual abuse and consensual adolescent intimacy. Many countries have introduced “close-in-age” or “Romeo and Juliet” exemptions, which prevent criminal liability when the age difference between partners falls within a specified range.⁵ These legal mechanisms acknowledge that adolescents often engage in romantic relationships as part of normal developmental processes and that criminal law should not be used to regulate such conduct unless exploitation is involved.

International human rights law also provides an important normative framework for analysing the issue. The United Nations Convention on the Rights of the Child (CRC), to which India is a party, recognises children as rights-bearing individuals with evolving capacities.⁶ The CRC emphasises both protection from abuse and respect for the autonomy and dignity of young persons. The challenge for domestic legal systems lies in balancing these two imperatives without undermining either objective.

This article examines the criminalisation of adolescent romance under POCSO through three interrelated analytical frameworks: constitutional morality, consent jurisprudence, and international child rights standards. It argues that the current legal regime fails to adequately distinguish between exploitative sexual conduct and consensual relationships among adolescents. As a result, the application of POCSO in such contexts risks undermining both constitutional rights and the broader objectives of child protection law.

The article proceeds in six parts. Part II examines the statutory framework of POCSO and its

⁴ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India); *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (India).

⁵ Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 *Buff. L. Rev.* 703 (2000); Catherine L. Carpenter, *On Statutory Rape, Strict Liability, and the Public Welfare Offense Model*, 53 *Am. U. L. Rev.* 313 (2003).

⁶ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

approach to consent and age of protection. Part III analyses the jurisprudence of Indian courts concerning consensual adolescent relationships under the Act. Part IV evaluates the issue through the lens of constitutional morality and fundamental rights. Part V explores international child rights standards and comparative legal approaches. Part VI proposes doctrinal and legislative reforms aimed at reconciling child protection with adolescent autonomy. The conclusion reflects on the broader implications of this debate for the evolution of criminal law and constitutional jurisprudence in India.

II. Statutory Framework of the POCSO Act

The Protection of Children from Sexual Offences Act, 2012 represents one of the most comprehensive legislative efforts undertaken in India to address sexual crimes against minors. Prior to its enactment, offences involving sexual exploitation of children were addressed primarily through provisions of the Indian Penal Code, many of which were considered inadequate in scope and sensitivity. The POCSO Act sought to remedy these deficiencies by establishing a specialised legal regime focused exclusively on protecting individuals below the age of eighteen years from sexual offences.⁷

A central feature of the statute is its expansive definition of “child,” which includes any person below the age of eighteen years.⁸ This definition aligns with international child rights norms and ensures that minors are afforded broad legal protection against sexual exploitation. However, the adoption of eighteen as the absolute threshold for consent has significant implications when applied to consensual relationships between adolescents.

The Act criminalises a wide range of conduct, including penetrative sexual assault, sexual assault, sexual harassment, and the use of children for pornographic purposes.⁹ Importantly, the statute adopts a strict liability approach whereby the consent of a minor is considered legally irrelevant. In effect, any sexual activity involving a person below eighteen years of age constitutes a criminal offence irrespective of whether the minor willingly participated in the act.¹⁰

⁷ Law Commission of India, *172nd Report on Review of Rape Laws* (2000).

⁸ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d), India Code (2012).

⁹ *Id.* §§ 3–11.

¹⁰ Aparna Chandra, *The POCSO Act and the Legal Regulation of Adolescent Sexuality*, 8 Indian L. Rev. 1 (2020).

The rationale behind this approach is rooted in the recognition that minors are particularly vulnerable to coercion, manipulation, and exploitation. Legislators sought to eliminate the possibility that perpetrators might escape liability by claiming that the child consented to the act. However, the rigid nature of this framework has created significant challenges in cases involving consensual relationships between adolescents.

Another notable aspect of the statute is its mandatory reporting requirement. Section 19 of the Act obligates any person who has knowledge of a sexual offence against a child to report the matter to the authorities.¹¹ Failure to do so may itself constitute a criminal offence. While this provision was intended to ensure prompt reporting of abuse, it has inadvertently contributed to the criminalisation of adolescent relationships, particularly when parents or community members report such relationships to law enforcement authorities.

The procedural framework of the Act also reflects a strong emphasis on victim protection. Special courts are established for the trial of offences under the statute, and proceedings are designed to minimise trauma for child victims.¹² Although these mechanisms are essential for addressing genuine cases of abuse, their application in cases of consensual adolescent romance can produce unintended consequences, including the stigmatisation and criminalisation of young individuals.

The absence of a close-in-age exemption within the statutory scheme is perhaps the most significant factor contributing to the current dilemma. Unlike several other jurisdictions, the POCSO Act does not provide any exception for consensual sexual activity between individuals who are close in age. Consequently, even relationships between teenagers separated by only one or two years may fall within the ambit of criminal liability.

This rigid framework has increasingly been criticised by scholars, judges, and policymakers who argue that it fails to reflect the realities of adolescent development and social interaction. Empirical studies suggest that a significant proportion of POCSO cases involve consensual relationships rather than exploitative abuse.¹³ Such cases raise important questions about whether the criminal justice system is being used in a manner consistent with the protective

¹¹ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 19.

¹² *Id.* §§ 28–33.

¹³ National Crime Records Bureau, *Crime in India 2022: Statistics on Crimes against Children* (Government of India 2023).

objectives of the legislation.

III. Judicial Responses and Emerging Jurisprudence

Indian courts have grappled extensively with the complex issue of consensual adolescent relationships under POCSO. The judiciary's responses reveal a tension between strict statutory interpretation and the need to prevent injustice in cases where criminal liability appears disproportionate.

The Supreme Court has repeatedly emphasised that the consent of a minor is legally irrelevant in prosecutions involving sexual offences under statutory rape laws. In *Independent Thought v. Union of India*, the Court addressed the constitutionality of the marital rape exception contained in the Indian Penal Code and held that sexual intercourse with a wife below eighteen years of age constitutes rape.¹⁴ The decision reinforced the principle that minors are incapable of providing legally valid consent to sexual activity.

However, several High Courts have adopted more nuanced approaches when confronted with cases involving consensual adolescent relationships. Courts have frequently recognised that rigid application of POCSO in such circumstances may lead to unjust outcomes. For instance, the Madras High Court has repeatedly observed that teenage romantic relationships are a social reality and that criminal law should not be used to penalise consensual relationships between young individuals.¹⁵

In *Sabari v. Inspector of Police*, the Madras High Court emphasised the need to distinguish between genuine cases of sexual exploitation and consensual romantic relationships between adolescents.¹⁶ The Court acknowledged that the strict statutory framework of POCSO often results in the prosecution of young individuals who have engaged in consensual relationships without any element of coercion or abuse.

Similarly, the Delhi High Court has expressed concern about the increasing number of POCSO cases arising from consensual relationships. In several decisions, the Court has highlighted the need for legislative reform to address this issue, noting that the criminalisation of adolescent

¹⁴ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

¹⁵ *S. Varadarajan v. State of Madras*, AIR 1965 SC 942 (India); *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 2623 (India).

¹⁶ *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 8933 (India).

romance may undermine the objectives of child protection law.¹⁷

Despite these judicial concerns, courts remain constrained by the clear language of the statute. In many cases, judges have emphasised that any reform must ultimately be undertaken by the legislature rather than through judicial interpretation. This institutional limitation has contributed to the persistence of the current legal dilemma.

IV. Constitutional Morality and the Question of Adolescent Autonomy

The debate surrounding the criminalisation of adolescent romance under the Protection of Children from Sexual Offences Act must ultimately be situated within the broader framework of constitutional morality and the evolving jurisprudence of fundamental rights in India. Constitutional morality, as developed in Indian constitutional law, represents a normative framework through which constitutional values such as liberty, dignity, equality, and autonomy guide the interpretation and application of statutory provisions.¹⁸ The doctrine has increasingly been invoked by courts to assess whether laws and state actions align with the transformative aspirations embedded within the Constitution.

The Supreme Court's articulation of constitutional morality in recent landmark judgments has significantly expanded the scope of personal liberty and decisional autonomy. In *Navtej Singh Johar v. Union of India*, the Court emphasised that constitutional morality must prevail over social morality when fundamental rights are implicated.¹⁹ The judgment underscored that the Constitution protects individual choices relating to intimate relationships and personal identity, thereby affirming the centrality of autonomy in the constitutional order. Although the case concerned the decriminalisation of consensual same-sex relations, its broader doctrinal implications extend to the protection of personal autonomy in intimate decision-making.

Similarly, the landmark judgment in *Justice K.S. Puttaswamy v. Union of India* recognised privacy as a fundamental right intrinsic to life and personal liberty under Article 21.²⁰ The Court observed that privacy encompasses decisional autonomy in matters relating to family life, marriage, procreation, and sexual orientation. These principles have profound implications for the legal regulation of consensual relationships, including those involving adolescents

¹⁷ *Court on Its Own Motion v. State*, 2020 SCC OnLine Del 1652 (India)

¹⁸ Manoj Mate, *Constitutional Morality and the Indian Constitution*, 28 Nat'l L. Sch. India Rev. 23 (2016).

¹⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

²⁰ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

approaching adulthood.

However, the constitutional protection of autonomy must be balanced against the legitimate objective of protecting minors from exploitation and abuse. The State possesses a compelling interest in safeguarding children, who are recognised as a vulnerable group requiring special protection under constitutional and international law.²¹ This protective obligation has historically justified stricter regulation of sexual conduct involving minors.

The challenge arises when the protective rationale underlying child protection laws intersects with the emerging constitutional recognition of individual autonomy. Adolescents occupy a unique position within this legal framework. While they are legally classified as minors, they are also individuals undergoing significant cognitive, emotional, and social development. Contemporary psychological and sociological research indicates that adolescents gradually acquire the capacity to make informed decisions regarding personal relationships and sexuality.²²

The rigid statutory framework of POCSO does not adequately account for this developmental reality. By categorically criminalising all sexual conduct involving individuals below eighteen years of age, the Act effectively denies any legal recognition of adolescent autonomy. This approach may be justified in cases involving significant power imbalances or exploitation; however, it becomes problematic when applied to consensual relationships between individuals of similar age.

Indian constitutional jurisprudence has increasingly emphasised the importance of individual choice in matters relating to personal relationships. In *Shafin Jahan v. Asokan K.M.*, the Supreme Court reaffirmed that the right to choose one's partner is a fundamental aspect of personal liberty protected under Article 21.²³ Although the case involved adult individuals, the Court's reasoning reflects a broader constitutional commitment to protecting personal autonomy in matters of intimate association.

The concept of constitutional morality also requires that laws be interpreted in a manner that promotes substantive justice and respects human dignity. When the criminal justice system is

²¹ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114 (India).

²² Laurence Steinberg, *Adolescence* (11th ed., McGraw Hill 2016).

²³ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (India).

used to prosecute adolescents engaged in consensual relationships, the resulting outcomes may conflict with these constitutional values. Criminal prosecution, incarceration, and the stigma associated with sexual offences can have devastating consequences for young individuals whose conduct may reflect ordinary adolescent behaviour rather than criminal wrongdoing.

Moreover, the criminalisation of adolescent romance may disproportionately affect young men from marginalised communities. Studies examining the application of POCSO have indicated that many prosecutions arise from complaints filed by parents seeking to prevent relationships across caste, class, or religious boundaries.²⁴ In such cases, the law may inadvertently reinforce social hierarchies and moral policing rather than protecting vulnerable children from abuse.

The doctrine of constitutional morality therefore demands a careful reassessment of the manner in which POCSO is interpreted and applied. Courts must strive to ensure that the statute's protective objectives are achieved without undermining the fundamental rights and dignity of young individuals. This requires a nuanced approach that distinguishes between exploitative sexual conduct and consensual relationships among adolescents.

V. International Child Rights Standards and Comparative Legal Perspectives

The issue of adolescent consent and criminal liability must also be examined within the broader framework of international human rights law, particularly the norms established under the United Nations Convention on the Rights of the Child (CRC). The CRC represents the most comprehensive international instrument governing the rights of children and has been ratified by India.²⁵ The Convention recognises children not merely as passive recipients of protection but as individuals possessing evolving capacities and participatory rights.

Article 3 of the CRC establishes the principle that the best interests of the child shall be a primary consideration in all actions concerning children.²⁶ At the same time, Article 12 recognises the right of children to express their views freely in matters affecting them, with due weight given to their age and maturity.²⁷ These provisions reflect a balanced approach that combines protection with respect for autonomy.

²⁴ Flavia Agnes, *POCSO and the Problem of Romantic Relationships*, 50 *Econ. & Pol. Wkly.* 12 (2015).

²⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁶ *Id.* art. 3.

²⁷ *Id.* art. 12.

The Committee on the Rights of the Child has emphasised that adolescents possess evolving capacities that must be recognised within legal frameworks governing sexual and reproductive health.²⁸ According to the Committee, laws regulating sexual conduct involving minors should avoid criminalising consensual activities between adolescents of similar age. Excessively punitive legal frameworks may discourage young people from seeking health services or reporting genuine abuse.

Comparative legal analysis reveals that many jurisdictions have adopted more nuanced approaches to addressing adolescent sexuality. Several countries have introduced “close-in-age” or “Romeo and Juliet” exemptions designed to prevent the criminalisation of consensual relationships between young individuals whose age difference falls within a specified range.

In the United States, statutory rape laws in numerous states incorporate close-in-age exemptions that shield teenagers from criminal liability when the age difference between partners is relatively small.²⁹ These provisions recognise that consensual relationships between adolescents are fundamentally different from exploitative relationships involving significant age disparities.

Similarly, the United Kingdom’s Sexual Offences Act 2003 establishes the age of consent at sixteen but allows for prosecutorial discretion in cases involving consensual activity between minors.³⁰ Canadian law adopts an even more structured approach by providing explicit close-in-age exemptions that permit consensual sexual activity between adolescents within specified age ranges.³¹

These comparative models demonstrate that it is possible to design legal frameworks that simultaneously protect minors from exploitation while avoiding the criminalisation of consensual adolescent relationships. The absence of such safeguards within the Indian statutory framework has contributed to the current legal dilemma.

Another important dimension of international child rights law concerns the principle of proportionality in criminal justice responses involving children. The CRC and related

²⁸ Committee on the Rights of the Child, General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence, U.N. Doc. CRC/C/GC/20 (2016).

²⁹ Michelle Oberman, *Regulating Consensual Sex with Minors*, 48 *Buff. L. Rev.* 703 (2000).

³⁰ Sexual Offences Act 2003, c. 42 (U.K.).

³¹ Criminal Code, R.S.C. 1985, c. C-46 (Canada).

instruments emphasise that punitive measures involving minors should be used only as a last resort and must prioritise rehabilitation over punishment.³² When adolescents are prosecuted under stringent sexual offence laws for consensual conduct, the resulting penalties may be inconsistent with these principles.

International human rights bodies have repeatedly emphasised the importance of aligning domestic legal frameworks with evolving understandings of adolescent development. Legal systems must recognise that young people possess increasing autonomy as they approach adulthood and that rigid age-based prohibitions may fail to reflect social and developmental realities.

For India, reconciling the POCSO framework with international child rights standards requires careful consideration of both protection and autonomy. While the prevention of child sexual abuse remains an essential objective, legal responses must also respect the dignity and evolving capacities of adolescents.

VI. Towards a Balanced Legal Framework: Doctrinal and Legislative Reform

The challenges posed by the criminalisation of adolescent romance under POCSO have prompted increasing calls for doctrinal reinterpretation and legislative reform. A balanced legal framework must preserve the statute's core objective of protecting children from sexual exploitation while ensuring that consensual adolescent relationships are not subjected to disproportionate criminal penalties.

One potential approach involves judicial reinterpretation of existing statutory provisions through purposive interpretation. Courts may emphasise the requirement of exploitative intent or coercion in determining criminal liability under certain provisions of the Act. Although such interpretive strategies cannot fully overcome the rigid language of the statute, they may help mitigate some of the harsh consequences associated with strict liability.

Another possible reform involves the introduction of a close-in-age exemption within the statutory framework. Such an exemption would permit consensual sexual activity between adolescents when the age difference between partners falls within a specified range, for

³² United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33 (1985).

example two or three years. This approach would align Indian law with comparative international practice while preserving strong protections against exploitation by adults.

Legislative reform could also involve reconsideration of the absolute age threshold of eighteen years for purposes of consent. Some scholars have suggested adopting a graduated framework that recognises different levels of legal capacity as adolescents mature.³³ Such an approach would reflect the developmental realities of adolescence while maintaining safeguards against abuse.

Policy reforms should also address the misuse of POCSO in cases arising from parental opposition to inter-caste or inter-religious relationships. Mechanisms such as preliminary judicial scrutiny or specialised review committees could help ensure that criminal proceedings are not initiated in cases involving consensual relationships between adolescents.

Furthermore, legal reforms must be accompanied by broader social initiatives aimed at promoting comprehensive sexuality education and awareness among young people. Empowering adolescents with accurate information about relationships, consent, and reproductive health is essential for preventing exploitation while respecting autonomy.

Conclusion

The criminalisation of adolescent romance under the Protection of Children from Sexual Offences Act represents one of the most complex challenges confronting contemporary Indian criminal law. While the statute was enacted with the laudable objective of protecting children from sexual abuse, its strict liability framework has inadvertently produced outcomes that undermine both constitutional values and the broader goals of child protection.

The analysis presented in this article demonstrates that the current legal regime fails to adequately distinguish between exploitative sexual conduct and consensual relationships among adolescents. Judicial decisions across India reveal growing concern about the disproportionate consequences of applying POCSO to teenage romance. At the same time, constitutional jurisprudence emphasising autonomy, dignity, and privacy has created a normative framework that demands greater sensitivity to individual choice in matters of

³³ Aparna Chandra, *The POCSO Act and the Legal Regulation of Adolescent Sexuality*, 8 Indian L. Rev. 1 (2020).

intimate relationships.

International child rights standards and comparative legal practices further highlight the need for a more nuanced approach. Many jurisdictions have successfully implemented legal mechanisms that protect minors from exploitation while avoiding the criminalisation of consensual adolescent relationships.

Reconciling these competing imperatives requires both judicial sensitivity and legislative reform. Introducing close-in-age exemptions, adopting a more flexible approach to consent, and ensuring that prosecutions focus on genuine cases of exploitation would help align the POCSO framework with constitutional morality and international human rights norms.

Ultimately, child protection laws must strike a delicate balance between safeguarding vulnerable individuals and respecting the evolving capacities of young people. Achieving this balance is essential not only for the integrity of the criminal justice system but also for the broader project of constitutional transformation in India.