
THE CONSTITUTIONAL AND REHABILITATIVE CONUNDRUM OF ADOLESCENT CONSENSUAL SEXUALITY: A CRITICAL ANALYSIS UNDER THE BHARATIYA NYAYA SANHITA (BNS) 2023 AND JUVENILE JUSTICE ACT 2015

Raghavendra Singh, Practicing Advocate, Allahabad High Court

ABSTRACT

This paper examines the complex socio-legal conflict surrounding the complete criminalisation of consensual sexual relationships between adolescents aged 16–18 in India. Following the legislative overhaul of 2024, which replaced the Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita, 2023 (BNS), the Code of Criminal Procedure (CrPC) with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Indian Evidence Act with the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the legal landscape surrounding statutory rape and adolescent consent has transformed. The age of consent remains strictly fixed at 18 under BNS Section 63(6) and the Protection of Children from Sexual Offences (POCSO) Act, 2012. Meanwhile, the Juvenile Justice (Care and Protection of Children) Act, 2015 permits the trial of juveniles aged 16–18 as adults for heinous offences such as rape under BNS Section 64, which carries a minimum 10-year sentence. Through a balanced synthesis of protectionist and autonomy-based arguments, this paper explores the constitutional implications under Articles 14, 15(3), and 21, the cognitive neuroscience of adolescent brain development, and the evidentiary rules governing DNA testing under Section 116 of the BSA. Highlighting key 2026 judicial milestones including the Supreme Court's landmark rulings in *X v. State of Bihar* and *Nikhat Parveen v. Rafique*, the paper proposes legislative reforms, such as the introduction of a statutory close-in-age exception and structured judicial discretion, to align Indian law with modern global standards of developmental justice.

I. INTRODUCTION AND THE STATUTORY PARADOX

The legal status of adolescent consensual sexuality and criminal responsibility in India stands at a critical crossroads. On one hand, the state has a profound interest and a constitutional duty under Article 15(3) to protect children from exploitation, trafficking, and sexual abuse. On the other hand, the complete criminalisation of consensual sexual activity between adolescents aged 16–18 presents a significant challenge to the emerging constitutional jurisprudence of personal autonomy, privacy, and developmental justice. This conflict has become particularly pronounced in the wake of the 2024 criminal law reforms, which replaced the colonial-era penal code with the **Bharatiya Nyaya Sanhita, 2023 (BNS)**, and modernized procedural and evidentiary frameworks.

Under the prior regime, the Indian Penal Code, 1860 (IPC) defined rape under Section 375, declaring under the 'Sixthly' description that sexual intercourse with a female under the age of 18 was rape, regardless of her consent. This definition, along with the provisions of the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, created a strict protective shield that nullified adolescent consent. With the implementation of the **BNS, 2023** on July 1, 2024, the substance of this framework was retained under **Section 63 of the BNS**, with the sixth description explicitly maintaining the age of consent at 18. Furthermore, the newly enacted **Section 64 of the BNS** increased the minimum punishment for standard rape from seven to ten years of rigorous imprisonment. Under the **Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)**, an offence carrying a minimum punishment of seven years is classified as a 'heinous offence.' Consequently, an adolescent male aged 16–18 who engages in a consensual sexual relationship with a peer under 18 automatically faces charges of a heinous offence, triggering a preliminary assessment under **Section 15 of the JJ Act** and raising the possibility of being tried as an adult.

The resulting statutory paradox is clear. If both partners in a consensual sexual relationship are minors (for instance, a male aged 16 and a female aged 17), the legal system processes them in a starkly asymmetric manner. The female is treated as a 'child in need of care and protection' who has been subjected to a heinous offence, while the male is classified as a 'child in conflict with law' who has committed penetrative sexual assault under Section 3 of the POCSO Act and rape under Section 63 of the BNS. This legal construct ignores the mutual nature of the relationship, effectively converting romantic partners into criminal offenders and victims. This

paper evaluates the constitutional, developmental, and evidentiary dimensions of this regime in light of 2026 legal standards.

II. THE CONSTITUTIONAL DIALECTIC: AUTONOMY VS. PATERNALISM

A. Article 14: Arbitrary Classification and the Reasonable Nexus Test

The constitutional validity of criminalising adolescent consensual sexual relationships is heavily debated under **Article 14 of the Constitution**, which guarantees equality before the law and prohibits arbitrary state action. The classic test for reasonable classification requires two conditions to be satisfied: (i) the classification must be founded on an intelligible differentia, and (ii) the differentia must have a rational relation or nexus to the object sought to be achieved by the statute (*State of West Bengal v. Anwar Ali Sarkar*, *Budhan Choudhary v. State of Bihar*). Critics of the current framework argue that the law creates an arbitrary and over-inclusive classification by treating consensual adolescent relationships under the same statutory umbrella as violent, non-consensual sexual assaults. By ignoring the qualitative difference between consensual adolescent intimacy and predatory sexual violence, the law inflicts a disproportionate burden on minors and fails to achieve its protective purpose. Instead of protecting children from harm, it criminalises them, disrupting their education, family lives, and psychological development.

Conversely, the State and protectionist advocates argue that the classification of all sexual intercourse with females under 18 as rape is a valid and reasonable classification. The primary objective of the BNS and POCSO Act is to shield minors from sexual exploitation, early pregnancy, and the psychological trauma of premature sexual relationships. The differentia between minors and adults is based on the biological and cognitive vulnerability of youth, which constitutes an intelligible differentia. The State contends that a bright-line age threshold is necessary because introducing subjective inquiries into 'adolescent consent' would create evidentiary loopholes, enabling actual predators to claim consent and escape punishment. Under this view, individual instances of harshness are the price of a robust, objective protective regime.

B. Article 21: Personal Liberty, Privacy, and Bodily Autonomy

The challenge under **Article 21** is anchored in the jurisprudence of the right to life, personal

liberty, privacy, and dignity. In the landmark case of *K.S. Puttaswamy v. Union of India* (2017), the Supreme Court of India recognized the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21. The Court held that privacy encompasses spatial privacy, informational privacy, and crucial to this discussion, **decisional autonomy**. Decisional autonomy guarantees an individual's right to make critical personal choices, including those regarding intimate relationships and sexuality, free from state interference. Earlier, in cases like *Maneka Gandhi v. Union of India* (1978) and *Francis Coralie Mullin v. Union Territory of Delhi* (1981), the Court established that the right to life means something more than mere animal existence; it includes the right to live with human dignity. Adherents of the autonomy perspective argue that adolescents aged 16–18 possess a developing sense of bodily autonomy and emotional intimacy. Completely denying them the legal capacity to consent to non-exploitative, consensual relationships unreasonably encroaches upon their right to privacy and personal development, imposing state-mandated social morality upon young citizens.

From the protectionist standpoint, however, the right to privacy under Article 21 is not absolute and must be balanced against the state's interest in protecting public health, safety, and morality (*State of Bombay v. F.N. Balsara*). The State argues that because of their physical, emotional, and social immaturity, adolescents under 18 lack the capacity to make fully informed and mature choices regarding sexual relationships and their long-term consequences, such as pregnancy and social stigma. The protectionist perspective holds that the absolute prohibition of underage sexual relations is a reasonable restriction on personal liberty, aimed at preventing harm to vulnerable minors and upholding the social fabric. Under this view, gender justice and child protection override claims of adolescent autonomy.

III. THE REHABILITATIVE VS. ADVERSARIAL PARADIGM IN JUVENILE TRANSFERS

A. Section 15 of the Juvenile Justice Act and the Adult Trial Controversy

The debate over whether juveniles aged 16–18 should be tried as adults represents one of the most contentious issues in modern criminal jurisprudence. Following public outrage over several high-profile crimes, the Parliament amended the juvenile justice framework by enacting the **Juvenile Justice (Care and Protection of Children) Act, 2015**. Under **Section 15** of this Act, when a juvenile aged 16–18 is accused of committing a 'heinous offence' (defined as an

offence carrying a minimum punishment of seven years), the Juvenile Justice Board (JJB) must conduct a preliminary assessment to evaluate: (i) the juvenile's mental and physical capacity to commit the offence, (ii) their ability to understand the consequences of the offence, and (iii) the circumstances under which the offence was committed. If the JJB concludes that the juvenile should be tried as an adult, it transfers the case to the Children's Court under **Section 18(3)**.

Because **Section 64 of the BNS, 2023** sets the minimum punishment for rape at ten years of rigorous imprisonment, adolescents in consensual relationships who are charged with statutory rape are automatically subjected to this transfer mechanism. The adversarial approach of the adult court, which focuses on retribution and deterrence, stands in stark contrast to the rehabilitative and restorative principles of the juvenile justice system. Critics argue that exposing adolescents in consensual relationships to the adult criminal justice system causes severe psychological trauma, permanent social stigma, and increases the likelihood of recidivism by placing them in contact with hardened offenders, thereby defeating the primary welfare goals of child-centric legislation.

B. Cognitive Science and Adolescent Brain Development

The argument against adult trials for adolescents is strongly reinforced by modern developmental cognitive neuroscience. Studies on brain development demonstrate that the human brain, particularly the **pre-frontal cortex**, continues to develop and mature well into a person's mid-twenties. The pre-frontal cortex is the executive center of the brain, responsible for long-term planning, impulse control, risk assessment, and evaluating the long-term consequences of one's actions. During adolescence, the limbic system which drives emotion and sensation-seeking behavior develops faster than the pre-frontal cortex. This biological imbalance explains why adolescents frequently engage in risky, impulsive behavior without fully appreciating the legal or personal consequences. Cognitive scientists argue that it is scientifically unsound and legally unjust to expect an adolescent to possess adult-level judgment or moral development. Because adolescence is a transient developmental stage, most youth naturally desist from delinquent behavior as their brains mature provided they are spared the trauma and stigma of the adult penal system.

C. The 2026 Jurisprudential Shift: *X v. State of Bihar & Anr.*

To prevent the arbitrary transfer of juveniles to adult courts, the Supreme Court of India has progressively tightened the procedural requirements for preliminary assessments under Section 15. This development culminated in the landmark judgment of *X v. State of Bihar & Anr.*, decided on **July 21, 2026** (2026 SCC OnLine SC 1363). In this case, the Supreme Court, through a bench of Justices J.B. Pardiwala and R. Mahadevan, issued comprehensive guidelines redefining the scope and nature of preliminary assessments under Section 15. The Court ruled that a preliminary assessment is not a 'mini-trial' and must not be conducted as a mechanical exercise. Instead, it must be a holistic inquiry into the juvenile's socio-psychological reality.

Crucially, the Supreme Court held that while expert psychological or medical opinion is of immense value, it **cannot be the sole basis** for transferring a juvenile to the adult court. The JJB must actively and holistically examine the **Social Background Report (SBR)**, the **Social Investigation Report (SIR)**, statements of family and community members, and other relevant environmental materials before making a transfer decision. This 2026 milestone ensures that the 'mental capacity' to commit a crime is evaluated in its social and developmental context, protecting adolescents involved in non-exploitative, consensual relationships from being arbitrarily subjected to adult trials.

IV. EVIDENCE, PRIVACY, AND SCIENTIFIC TRUTH UNDER THE BSA

A. Section 116 of the Bharatiya Sakshya Adhiniyam: The Presumption of Legitimacy

In cases where adolescent consensual relationships lead to pregnancy, establishing biological paternity often becomes a critical evidentiary issue for the prosecution. Historically, Section 112 of the Indian Evidence Act, 1872 established a powerful, almost irrebuttable statutory presumption of legitimacy for children born during the continuance of a valid marriage. The only statutory means to rebut this presumption was to prove 'non-access' between the spouses at the time the child could have been conceived. This legal fiction was designed to protect the child from the severe social stigma and legal disadvantages associated with illegitimacy.

With the legislative reforms of 2024, Section 112 of the Evidence Act was reenacted verbatim as **Section 116 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA)**. The retention of this

classical presumption demonstrates a clear legislative intent to prioritize social stability, family integrity, and the welfare of the child over biological accuracy. However, the rapid advancement of DNA technology has created an unavoidable conflict between legal fiction and scientific truth, particularly in cases involving unmarried minor parents.

B. DNA Admissibility, the Right to Privacy, and the 'Triple Test' in 2026

The Supreme Court of India has navigated this conflict by balancing the child's right to know their biological identity and access maintenance against the alleged parent's fundamental right to privacy under Article 21. In the landmark 2026 ruling *Nikhat Parveen v. Rafique* (2026 INSC 399), the Supreme Court clarified that scientific advancements like DNA testing cannot be ordered as a matter of course. Rather, the court must apply a strict '**Triple Test**' before ordering a compulsory DNA examination: (i) the question of paternity must be directly in issue before the court, (ii) no other sufficient evidence must be available on record to resolve the dispute, and (iii) the test must be in the absolute best interest of justice and the child.

In the context of adolescent consensual relationships, the prosecution frequently seeks DNA testing of the infant to establish sexual contact between the accused male minor and the minor female. While a positive DNA match provides conclusive biological proof of sexual intercourse, the defense may challenge the order on the grounds of constitutional privacy, arguing that forcing an adolescent to undergo a DNA test violates bodily integrity and self-incrimination principles under Article 20(3) and Article 21. The 2026 jurisprudence underscores that while DNA evidence is highly reliable and can override traditional statutory presumptions once a test is lawfully conducted, the order directing such a test must rigidly adhere to the 'Triple Test' safeguards to prevent the violation of fundamental privacy rights.

V. INTERNATIONAL CONVENTIONS AND COMPARATIVE LAW MODELS

A. Harmonisation and the Principles of the CRC and Beijing Rules

India's domestic legal framework must be interpreted and applied in harmony with its international treaty obligations. Under Article 51(c) of the Constitution, the state must foster respect for international law and treaty obligations. Granville Austin famously described the Fundamental Rights and Directive Principles of State Policy as the 'Conscience of our Constitution.' Together, they form a cohesive framework that must be interpreted in light of

international human rights standards. In cases of statutory ambiguity, municipal courts are bound to apply the **principle of harmonisation**, construing domestic law to align with international conventions ratified by India (*Visakha v. State of Rajasthan, Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*).

In the sphere of juvenile justice, the primary international benchmarks are the **United Nations Convention on the Rights of the Child (CRC), 1989** and the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules)**. Article 3 of the CRC mandates that in all actions concerning children, the 'best interests of the child' must be a primary consideration. Article 40(1) emphasizes the right of every child in conflict with law to be treated in a manner that promotes their sense of dignity and worth, facilitates their reintegration into society, and assumes a constructive role in the community. Similarly, **Rule 17 of the Beijing Rules** provides that the legal response to juvenile delinquency must be strictly proportionate to the circumstances and gravity of the offence, the needs of the juvenile, and the interests of society, with incarceration used only as a measure of last resort. The current domestic framework, which mandate the automatic prosecution of adolescent males in consensual relationships as adult sex offenders, represents a clear departure from these international standards.

B. Comparative Global Models and the Close-in-Age Exception

A comparative review of foreign jurisdictions reveals alternative legal models that successfully balance minor protection with adolescent autonomy. Many progressive legal systems incorporate a '**close-in-age exception**' (commonly known as the 'Romeo and Juliet' clause) within their penal codes. For example, several state jurisdictions in the United States provide a statutory defense to statutory rape charges if the age difference between the minor partners falls within a specific limit (typically 2 to 4 years), and the relationship is entirely consensual and non-coercive. This exception recognizes that consensual relationships between peers are developmentally distinct from the exploitative abuse committed by adults against children.

Similarly, in **Canada**, the *Youth Criminal Justice Act, 2003* establishes a separate, highly rehabilitative justice system for youth, with the age of criminal responsibility set at 12 years, while incorporating statutory protections for peer-to-peer consensual sexual activity. In **France**, the penal code permits a Criminal Court to try minors between 16 and 18, but the plea of juvenility can be set aside only under strict, individualized conditions, and the law provides

wider judicial discretion to evaluate the emotional and psychological maturity of the adolescents involved. By adopting a rigid, bright-line age threshold without peer-to-peer exceptions, India's statutory framework remains unusually punitive, failing to account for the nuanced realities of adolescent development.

VI. PROPOSALS FOR REFORM AND CONCLUSION

The statutory and constitutional conflicts identified in this paper demand urgent legislative and judicial intervention to bring India's criminal and juvenile justice systems in line with 2026 standards of human rights and developmental science. To resolve these tensions, the following structural reforms are proposed:

1. Introduction of a Statutory 'Close-in-Age' Exception: The Parliament should amend Section 63 of the BNS and the POCSO Act to introduce a statutory exception for consensual sexual activity between adolescents aged 16–18. This exception should apply when the age difference between the partners is less than three years, and there is no evidence of coercion, force, or exploitation. This would successfully decriminalize peer-to-peer consensual relationships while maintaining strong criminal sanctions against adult predators.

2. Reforming the Preliminary Assessment Guidelines: In alignment with the Supreme Court's 2026 judgment in *X v. State of Bihar*, the JJB must abandon any mechanical approach to Section 15 transfers. The guidelines should explicitly state that consensual adolescent relationships should never be classified as 'heinous crimes' warranting adult trial. The assessment of 'mental capacity' must be contextualized, prioritizing the restorative welfare of the child over retributive punishment.

3. Enhancing Judicial Discretion: Trial courts and Children's Courts must be granted wider statutory discretion to evaluate the developmental, psychosocial, and emotional maturity of adolescents on an individual basis. Rather than applying rigid, age-based formulas, judges should be empowered to defer prosecution or apply community-based, non-custodial rehabilitative measures for minor offenders.

In conclusion, the legislative overhaul of 2024 offers an unprecedented opportunity to modernize India's socio-legal framework. The complete criminalisation of adolescent consensual relationships under the BNS and POCSO, combined with the harsh transfer

mechanism of the JJ Act, creates a statutory paradox that violates the fundamental rights of personal privacy, autonomy, and equality. By harmonising domestic law with the scientific realities of cognitive development and the international principles of the CRC, India can transition from an adversarial, retributive model to a compassionate, rehabilitative system of justice. Such a reform is essential to protect the dignity and future of India's youth, ensuring that the law serves as an instrument of welfare rather than oppression.

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