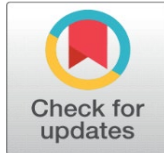
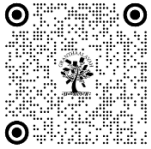


NAVIGATING THE GREY AREAS: ADOLESCENT CONSENT, ROMANTIC RELATIONSHIPS AND THE POCSO ACT, 2012 IN INDIA

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ABSTRACT

The paper explores the complex challenges posed in the implementation of the Protection of Children from Sexual Offences (POCSO) Act, particularly its impact on adolescent romantic relationships. It examines the unintended consequences of criminalizing all sexual behavior under the age of 18, despite developmental and consensual distinctions among teenagers. The study analyses how the rigid structure of the POCSO Act disproportionately affects adolescents engaged in consensual relationships and the broader societal and institutional implications of these legislative choices. Using a doctrinal methodology, the paper scrutinizes the POCSO Act's framework, focusing on its mandatory reporting requirements, age determination challenges, and lack of differentiation between consensual and non-consensual acts. The analysis identifies gaps in enforcement, resource limitations, and cultural barriers that hinder effective protection and justice for children. The core argument advanced is that the current binary approach to the age of consent fails to account for adolescent autonomy and can result in miscarriages of justice for both victims and accused teenagers.

The paper concludes that legal reform is imperative, recommending a nuanced adjustment to the age of consent provisions, early case screening to distinguish consensual acts, enhanced training for professionals, and greater stakeholder engagement in legislative revision. A multidimensional, society-wide approach—beyond mere legal frameworks—is essential to truly protect children while balancing their developmental rights.

Keywords: POCSO Act, Adolescent Consent, Consensual Relationships, Age of Consent, Autonomy and Privacy

1. INTRODUCTION

The law which is meant to protect children is becoming a tool that punishes adolescents for expressing love. India's Judicial System is struggling with the Protection of Children from Sexual Offences (POCSO) Act which has now come under intense judicial scrutiny. The Supreme Court itself has flagged the danger that its strict, one-size-fits-all provisions, may end up jailing young people for consensual romantic relationships, rather than shielding them from harm. By ordering the creation of a national expert panel and recommending comprehensive sex education, the apex court has decisively called for reforms that centre adolescent well-being and autonomy over mere statutory punishment, echoing the spirit of High Court observations that, the intention behind the POCSO Act was never to criminalise consensus,

observed in *State vs. Hitesh*¹, “love” is a fundamental human experience, and adolescents have the right to form emotional connections. The law should evolve to acknowledge and respect these relationships, as long as they are consensual and free from coercion”.

The POCSO act was enacted for the protection of children under 18 years from sexual abuse and exploitation including for pornography. Act has mandated the establishment of special courts putting emphasis on compulsory reporting and also outlines the role of medical professionals in reporting of sexual abuse. However, its implementation has generated significant dilemmas for the judiciary.

In many situations, it is clear that the association in question is not exploitive. The girl had consented voluntarily, and, in majority cases, she even promises to cohabit with the boy. In most cases she is already married to him and she has even given birth to their children. Regardless of this, adolescents in such consensual relationships stand to be charged under the same statute, which is meant to prevent the sexual exploitation of these young people. This brings about dire consequences including, but not limited to, detention over extended periods as well as infringement on the independence of adolescents whose sexual and reproductive rights remain subject to control.

This indicates the critical necessity of a more complex legal framework that will protect minors against sexual violence, but does not violate their rights to personal decision-making and the freedom of consenting sexual activity. Laws need to differentiate the consensual and non-consensual acts among the adolescents because the existing static age of consent industries do not take into consideration the changing abilities of the young people. Unless this is changed, the law is prone to bring to life cases of biased judgments that are punishing to both victims and accused adolescents.

2. THE LEGAL FRAMEWORK: AGE OF CONSENT AND THE POCSO ACT

2.1. LEGISLATIVE INTENT AND CONTRADICTIONS

The Protection of Children from Sexual Offences (POCSO) Act in India, while designed to combat child sexual abuse, is facing significant challenges to constitutional guarantees of privacy and autonomy, particularly concerning the age threshold set by the Act. From a constitutional perspective, the right to privacy has been upheld by the Supreme Court of India as a fundamental right that is intertwined with an individual's autonomy over personal decisions and bodily integrity. The POCSO Act's blanket ban on all sexual activity under 18 years, can be seen as a violation of this fundamental right, as it does not take into account the consensual nature of relationships between adolescents² Supreme Court Smells Teen Spirit.

The mandatory reporting requirement in the POCSO Act, including where a minor seeks an abortion, can put the adolescents in situations where their personal choices are likely to be exposed and this will hinder their right to privacy and pregnancy options. Classified as a protective regulation aimed at children, critics view the law is an inability to differentiate between real and imagined abuse as well as consensual teen sexual intimacy, as normal. This conflict interferes with the dignity and individual liberty as substantiated by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.³ The problem highlights the necessity to strike the balance between the protective scope of POCSO and the rights of adolescents to make their own decisions, which should be valuable in both the ethical philosophy of Kant and the constitutional framework of India, based on rights.

2.2. AGE DETERMINATION UNDER THE POCSO ACT

Determining the age of individuals in legal contexts, especially when the age is contested in alleged offences, poses several challenges. These challenges are multifaceted and arise from the need to balance accurate forensic analysis with legal requirements. Given the impact of age determination on legal proceedings, such precision is critical.

In the case of *Jarnail Singh v. State of Haryana*⁴ has decided to depend upon the JJ Act while dealing with the determination of age.

¹ State v. Hitesh Neutral Citation No. 2025: DHC: 944.

² Amita Pitre and Sunita Sheel Bandewar, ‘Law Commission of India Report on the Age of Consent: Denying Justice and Autonomy to Adolescents’ IX J Med Ethics <<https://orcid.org/0000-0002-7705-5064>> accessed 19 July 2025.

³ 2019 (1) SCC 1.

⁴ 2013 (7) SCC 263.

To which court has decided not to rely on transfer certificates as in the case of **P.Yuvaprakash vs State**⁵. The Court observed that the Juvenile Justice (JJ) Act clearly lays down the order of preference for determining the age of a child. If the school matriculation or birth certificate is not available, then a medical test for age determination, also called ossification test should be used as the last resort. But the court has not denied considering the transfer certificate as a record of examination to determine age.

3. THE MANDATORY REPORTING REQUIREMENT: IMPLICATIONS & CHALLENGES

3.1. SOCIETAL AND INSTITUTIONAL IMPACT

This law obliges healthcare providers, including paediatricians who are often the first point of contact with abused children, to report any instances of sexual abuse to authorities.⁶Failing to do so attracts legal actions.

Mandatory reporting under the POCSO Act can lead to breaches of confidentiality, which are crucial for encouraging adolescents to seek care, particularly for sensitive issues like sexual health and substance use⁷. Confidential healthcare is essential for adolescents as it facilitates open communication between them and their healthcare providers, encouraging the disclosure of sensitive health issues that may otherwise go unaddressed⁸.In the landmark judgment of **X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi**⁹, the Supreme Court of India clarified the interplay between the Protection of Children from Sexual Offences (POCSO) Act and the Medical Termination of Pregnancy (MTP) Act. The Court has explained that medical practitioners are not legally mandated to identify a minor or reveal his personal information in reporting the case under the POCSO Act, even when the termination of pregnancy is involved. Dwelling on the importance of reading the MTP Act with POCSO Act, the bench noted that mandatory disclosure would discourage adolescents to seek medical attention in time and place their health and privacy is in jeopardy. To avoid this deterrence, the Court noted that, on the demand of the minor or her parent or guardian, a Registered Medical Practitioner (RMP) does not need to identify the minor when passing on its reporting obligations under POCSO and is spared to do so during a criminal trial.

4. CRIMINALISATION OF CONSENSUAL ADOLESCENT RELATIONSHIPS

4.1. BINARY APPROACH AND ITS CONSEQUENCES

The POCSO Act's blanket definition of a child as less than 18 years unintentionally criminalizes consensual adolescent relationships, leading to stigma and denying adolescents justice and autonomy, despite the Act not being intended for such cases.In the **Sabari v. The Inspector of Police**¹⁰case, the position taken is that the exercise of the power of intention will overlap the above powers. The Court noted in this case that most of such cases that deal with 16–18-year-olds are a result of love relationship that takes place and can be found to be prosecuted under the POCSO Act.

In the case of **Vijaylakshmi V., state**¹¹judicial observations have critically examined the difficulties that arise from this rigid age threshold. In **Vijaylakshmi V., state** the Madras High Court highlighted the adverse effects of automatically invoking POCSO's stringent provisionin cases where both parties are adolescents or young adults, and the relationship is genuinely consensual. This strict interpretation means that any intimate relationship involving a minor under 18, even one characterised by mutual affection and mental maturity, can lead to serious criminal prosecution.

The Court observed (para. 28) that adolescent entanglements, usually a by-product of mutual innocence and an attraction are treated as POCSO, once they are not confined to the platonic level. This negates adolescent development

⁵ 2023 INSC 626.

⁶Rajeev Seth and RN Srivastava, 'Child Sexual Abuse: Management and Prevention, and Protection of Children from Sexual Offences (POCSO) Act.' (2017) 54 Indian Pediatrics 949<<https://discovery.researcher.life/article/child-sexual-abuse-management-and-prevention-and-protection-of-children-from-sexual-offences-pocso-act/35e62ffc0ca837059dd4107e0a2a9dce>>accessed 20 July 2025.

⁷Marianne Sharko and others, 'State-by-State Variability in Adolescent Privacy Laws.' (2022) 149 Pediatrics<<https://discovery.researcher.life/article/state-by-state-variability-in-adolescent-privacy-laws/405985c62b6933e2964242a28f5f0672>>accessed 20 July 2025.

⁸Elise D Berlan and Terrill Bravender, 'Confidentiality, Consent, and Caring for the Adolescent Patient' (2009) 21 Current Opinion in Pediatrics 450<<https://discovery.researcher.life/article/confidentiality-consent-and-caring-for-the-adolescent-patient/29f6815e5d233b12b57fbc0d407b146>>accessed 20 July 2025.

⁹ Civil Appeal No. 5802 of 2022.

¹⁰2019 (3) MLJ CrI 110.

¹¹CrI. O.P.No.232 of 2021.

and unduly punishes the boys and blurs the boundary between exploitation and assent (para 18). However, the Court also understood the need to revise the meaning of the term child under POCSO to 16, not 18 (para 29), in order to exclude consensual sex at the age of 16 by establishing that those acts will be brought under the more permissive laws. Such reform would be more in tune with adolescent autonomy and yet would be protective against abuse.

Judicial understandings are consistent with scientific evidence that suggests the value of a biosocial approach to adolescent development that emphasizes social and biological influences as the determinants of health and life outcomes. Law and policy should therefore be in concurrence with these biosocial realities. Similarly, Arnett (2014) finds the need to both romanticize and experiment sexually, as normative and developmentally essential to identity as well as intimacy in adolescence, instead of being deviant as well as criminal by nature.¹²

In sum, the binary age threshold under POCSO, while intended as a guardrail against child sexual abuse, often results in the criminalisation of consensual, developmentally typical adolescent relationships. This not only causes disproportionate harm to the involved youths—potentially derailing education and livelihoods as highlighted in **Vijaylakshmi V. State**¹³ but also fails to align with both neuroscientific and psychosocial insights into adolescence. As the Court concludes in para 16, “*painting a criminal colour*” to such relationships is counterproductive, emphasising the urgent need for legal reform that incorporates developmental science and recognises the complexity of adolescent sexuality.

4.2. DISPROPORTIONATE IMPACT ON MARGINALISED COMMUNITIES

This shows misuse of the POCSO Act reinforces existing inequalities. Tribals, already alienated within educational and government systems, face additional barriers due to illiteracy, poverty, and lack of representation. Unlike dominant groups capable of resisting or negotiating the law, marginalised communities often lack the social capital to question or contest state action. Courts, including the Orissa High Court, have flagged widespread injustice resulting from such rigid application of the Act, especially highlighting how it undermines the unique customs and traditions of Adivasi and tribal people. There is increasing legal recognition of the need to balance statutory protections with social realities and to prevent the further marginalisation of vulnerable groups.

The story of Babu, a tribal youth from Kerala’s Paniya community, illustrates this dynamic. Married to a 16-year-old girl from his community, Babu was imprisoned after school authorities reported the marriage upon discovering his wife’s pregnancy. Both Babu and other young men like Sivadasan endured years in jail for relationships that were consensual and culturally sanctioned but legally categorised as statutory rape due to strict age-of-consent provisions.

Such misuses of the POCSO Act have the potential to incorporate inequality into the existing realities. The Tribals who are already marginalized in educational and government processes are further pushed out by factors that involve illiteracy, poverty and representational absence. As socially vulnerable groups continue to be subject to measures to ensure their statutory security, there is a growing judicial acknowledgement that there must be a conjunction between the law and reality.

5. JUDICIAL RESPONSES: INTERPRETING THE GREY AREAS

5.1. PROGRESSIVE AND RESTRICTIVE INTERPRETATIONS

Indian courts, especially the Supreme Court, have consistently grappled with the challenges posed by the Protection of Children from Sexual Offences (POCSO) Act when applied to consensual adolescent relationships. The law’s strict age of consent (18 years) means that any sexual act involving a minor is deemed criminal, even when the relationship is consensual and non-exploitative. Courts have recognised the tension between statutory mandates and the social realities of adolescent romance.

The Supreme Court in **Alakh Alok Srivastava v. Union of India**¹⁴ laid down key directions to ensure **speedy and child-friendly trials** under the POCSO Act. These guidelines include:

¹²Kathleen Mullan Harris and Thomas W McDade, ‘The Biosocial Approach to Human Development, Behavior, and Health Across the Life Course’ (2018) 4 RSF: The Russell Sage Foundation Journal of the Social Sciences 2 <<https://www.rsfjournal.org/content/4/4/2>> accessed 20 July 2025.

¹³CrI.O.P.No.232 of 2021.

¹⁴ AIR 2018 SUPREME COURT 2440.

The establishment and constitution of Special **Courts** dedicated exclusively to POCSO cases to ensure focus and expertise.

These courts must be presided over by judges who are **sensitised** to child protection laws and the psychological needs of child victims.

The hearings in cases under the POCSO Act are supposed to be wrapped up within a year from when the court officially starts looking into the offence, so that the matter doesn't get dragged on for too long without reason.

Special Courts must actively **avoid unnecessary adjournments** and strictly follow the POCSO procedural framework to expedite justice.

The Chief Justices of High Courts are directed to form **monitoring committees** (three-judge or judge committees) to supervise the progress of POCSO cases.

A **Special Task Force** is to be set up at the police or equivalent level to ensure proper investigation and timely production of witnesses.

High Courts must ensure that the trial environment is **child-friendly**, safeguarding the child's dignity, comfort, and emotional well-being throughout the legal process.

The High Court and the Supreme Court has refrained their judgements from being allowed to be used as precedents, as these cases has been defined as the matter of "exceptional" instance. Empirical evidence shows that the so called growing up romantically in love is not an unprecedented phenomenon among adolescents but a phenomenon, which is very prevalent in people exceeding the age of 16. A study by Enfold covering 7,064 POCSO cases that came through in Assam, Maharashtra and West Bengal between 2016 and 2020 found 1,715 of these cases involved a romantic relationship (24.3 percent). Markedly, in 82% of the incidences, the minor complainants refused to testify against the accused. These findings were complemented by an empirical study conducted by Enfold and Project 39A together on 264 cases under Section 6 of the POCSO Act in same states and found that, in 25.4 per cent of cases, the sexual relationship was a consensual one¹⁵.

6. TOWARDS LEGAL REFORM: RECOMMENDATIONS

6.1. RETHINKING THE AGE OF CONSENT

Close-in-age exemptions, also known as Romeo and Juliet laws, have been passed across many jurisdictions to avoid criminalising , consensual underage sexual relationships between relatively close-in-age sexual partners of similar maturity, although they continue to apply to minors to protect them against exploitation. In the United States, some states permit consensual sex among teenagers ages between 14 to 17 with partners who are more than two to five years older, and the severity of the criminal charge may be lessened or eliminated. Canada also adopted the general age of consent of 16 but allows 14 and 15-year-olds to consent it, if there is no exploitation or authority appeal to the partners, with 12 to 13-year-olds being able to consent to their peers that are not more than five years older. These models show how law can achieve a balance between protection of the child and the autonomy of the adolescent without the dire sequels of criminalizing developmentally typical relationships.

Country/Region	Age of Consent	Close-in-Age Exemption Model	Key Features
Australia	Mostly 16	Varies by territory; exemptions allow limited age gaps (e.g., Tasmania, South Australia)	Age of consent 16-17; exemptions for consensual sex within small age gaps; protects against prosecution of adolescent peers.
Austria	14	Yes	Close-in-age clause permits consensual sex within a defined age difference
Italy	14	Yes	13-year-olds can consent if their partner is less than 3 years older; additional protections for positions of authority

¹⁵Shruthi Ramakrishnan and Swagata Raha, "Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra & West Bengal (Enfold Proactive Health Trust 2022).

Sweden	15	Yes	Sexual contact allowed if partner is no more than 3 years older; applies unless exploitation or authority is involved.
Switzerland	16	Yes	Close-in-age exemption protects consensual relationships between peers.
Philippines	16	Yes	Consent allowed if partners are within 3-year age gap; prohibits coercion or exploitation.
Germany	14	Implicit	Age gap tolerated unless exploitation proven; under 14 illegal
France	15	Yes	“Romeo and Juliet” clause allows sex with a partner within a 5-year age difference if under 15
Mexico	17 (varies 14-18 by state)	No	No close-in-age exemption; consensual sex between minors may be prosecuted
New Zealand	16	No	No specific exemption; underage relations may lead to prosecution
United Kingdom	16	No	No close-in-age exemption; sexual activity between minors can be prosecuted
Japan	13 (local laws 15-18)	No	No close-in-age exemption; age of consent varies by prefecture; stricter enforcement
South Korea	20	No	Complex and strict laws; no formal close-in-age exemption, effective age often higher
United States	Varies (14-18, mostly 16-18)	Yes	Many states allow consensual sex among teens 14-17 with partners 2-5 years older; varying laws.
Canada	16	Yes	Age 14-15 can consent if no exploitation or authority; 12-13 can consent to peers ≤5 years older.

International close-in-age exemptions offer useful models for India to balance child protection with adolescent agency. By contrast, the POCSO Act fixes the age of consent at 18 without exception, which often leads to the criminalisation of consensual relationships between adolescents or near-peers. Comparative experience shows that age-gap concessions (typically 2–5 years, starting from ages 14–16) can protect young people from exploitation while preventing the undue penalisation of normal adolescent relationships. Countries such as **Australia, Sweden, Italy, and the Philippines** have incorporated such frameworks to distinguish between exploitative conduct and consensual intimacy.

In India, proposals for a “Romeo and Juliet” clause suggest an age of consent at 16 with a close-in-age allowance of up to three years. Such a reform could reduce the misuse of POCSO against consensual adolescent relationships, acknowledge adolescent sexual intimacy and harmonise Indian law with international practice, while maintaining child-protection objectives. The **Law Commission**, while resisting a reduction of the formal age of consent, has nonetheless recognised the need for flexibility by recommending judicial discretion in cases involving adolescents aged 16–18 where tacit consent exists. This reflects a partial acceptance of developmental realities. However, formal close-in-age exemptions remain absent from Indian law.

6.2. PROCEDURAL AND LEGISLATIVE IMPROVEMENTS

With the emergence of a judicial discourse, international good practices, and evidence-based research, there is an urgent need to revise the Protection of Children under Sexual Offences (POCSO) Act to attempt at fitting the legal provisions of the legal and social reality that is adolescence in India. Although the Act was enacted with the aim of protecting children against sexual abuse, it's strictly applied law has brought numerous legal, social and psychological impacts especially in the instances when it is enforced to life cases of adolescent relationships that happen to be involved. A reform program of Indian law in this context may have to be built on the following pillars:

- 1) **Narrow In scope Legislative Change: Close-In-Age laws:** Introduce the concept of Romeo and Juliet clauses by decriminalising sex among adolescent children of age 16 to 18 with partners who are more than two to five years older, up to age of 23 years. Compatible exemptions similar to those in Canada, Italy and Sweden avoid abuse of the law on peer relationships but ensure anti-exploitation protection.
- 2) **Screening Committees:** As shown in Namibian practice, a multi-disciplinary approach to screening can serve as an appropriate model. Introduce and train nationwide an age appropriate, scientific and rights-based sexuality education. UNESCO and WHO have evidence that CSE would empower decision-making and reduce vulnerability to abuse as well as increasing respect of consent, which is important in child protection efforts.
- 3) **Training of the Stakeholders:** Arm the judges and prosecutors, the police, the doctors, and the child welfare officials with mandatory, periodic training in the psychology of adolescents, trauma informed procedures, and distinguishing consensual behaviour and exploitive behaviour.
- 4) **Multi-disciplinary Screening Subcommittees:** Establish district-level team to examine cases of adolescent romantic couples to advice courts. These bodies may suggest that divert, mediation or counselling be advised when no prosecution is needed or they are not in the best interest of the child.
- 5) **Children-Friendly Facilities:** Transform isolated POCSO courts with sensitive design, provide access to support persons and minimize exposure of the victim to the accused. At the same time, reinforce gender-sensitive practices in the police, medical and welfare systems.
- 6) **Institutions of Restorative Justice:** In non-exploitative teen cases consider restorative justice options where counselling, education and community service is the key, instead of prison. This is in accordance to international conventions relating to the rights of children and our juvenile justice framework in India.
- 7) **On-going Review and Oversight:** Ensure that POCSO continues to be reviewed on a periodic basis by the Ministry of Women and Child Development and Law Commission so that it is responsive to the changing social realities and empirical evidence.
- 8) **Victim/Family Support Services:** Improve support systems by providing free legal assistance, counselling, and representation services by use of UK, Australian, and Canadian model. These minimize the trauma caused by trials, and enhance the recovery of the victims.

7. CONCLUSION

This research set out to examine the inherent contradictions within India's Protection of Children from Sexual Offences (POCSO) Act, specifically its unintended—and often punitive—impact on consensual adolescent relationships. While the Act was designed to shield children from sexual abuse, its blanket criminalisation of all sexual activity under 18 years, disregards developmental realities, undermines adolescent autonomy, and has resulted in miscarriages of justice for both teenage “victims” and their peers. Comparative global models, particularly close-in-age exemptions and context-sensitive provisions found in countries like Sweden, Italy, and the Philippines, demonstrate that it is possible to protect children from exploitation without criminalising normal adolescent intimacy.

The main takeaway from this study is clear: India must move beyond a binary, one-size-fits-all approach. Introducing close-in-age exemptions, refining mandatory reporting and age determination protocols, instituting mandatory professional training, and enhancing community and stakeholder participation are pivotal reforms. These changes, grounded in evidence and international best practices, would create a protective framework that honours both the need for child safety and the rights and dignity of adolescents.

The call to action is urgent. Policymakers, jurists, and civil society must come together to reform the POCSO Act to truly serve its protective aims while respecting constitutional guarantees of privacy, autonomy, and adolescent development. Balancing justice, empathy, and child welfare is not just a legal imperative, but a societal responsibility.

As India stands at this crossroads, we must ask ourselves: will we persist with outdated frameworks that harm those they intend to protect—or will we shape a future where law evolves with society, and adolescent voices are heard, respected, and trusted?