

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

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ISSN

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RECONSIDERING THE AGE OF CONSENT UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO) IN INDIA

AUTHORED BY - RIYA KUMARI

Abstract

In order to protect children from sexual abuse and exploitation, the Protection of Children from Sexual Offences (POCSO) Act was passed in 2012. This paper examines the ongoing debate surrounding this age limit. We explore the justifications behind the current age, arguments for and against its reconsideration, and alternative approaches that prioritize child protection while acknowledging the evolving complexities of adolescent relationships. This study aims to investigate the reasons behind the current age of consent under the POCSO Act, its implications, and how it is being exploited currently by a thorough assessment of legal literature, case analyses, and an examination of international norms. Additionally, it looks into alternative age standards for other nations. Additionally, it makes an attempt to clarify that the POCSO Act was never intended to criminalize "consensual relationships between young adults," but rather to shield minors from sexual offenses. A significant provision establishes 18 as the legal age of consent for sexual behavior. However, there have been requests to reconsider this age restriction from various places. The paper examines India's consent laws as they stand today, examines the reasons for and against their reduction, and offers suggestions based on psychological studies, global standards, and opinions of important parties.

Keyword- Age consent, Pocso, consent, sexual offences, children

History of POCSO Act

The Protection of Children from Sexual Offences (POCSO) Act was enacted on 14 November 2012, by the Parliament of India in response of raising the matter about the increase of children sexual offence the main aim of this act to protect and safeguard the children from various form of sexual abuse and exploitation.

After the Nirbhaya case 2012 many new laws are enacted for the protection of children and

women, at the same time POCSO act also enacted. before this we don't have any effective law in protection of children from sexual offences. although it is a biggest problem than an offence against women because child is easy target, and they don't have a enough maturity to understand that they are victimize and in most of the cases neighbor and relatives are accused, whom the child knows.

So, after the Nirbhaya case POCSO act come in picture to make a reform in the field of offence against the children. it is a most effective law, as in this act both 'BOY' and 'GIRL' are consider as VICTIM. It is a "GENDER NEUTRAL LAW". There are several laws before the enactment of the Protection of Children from Sexual Offences (POCSO) Act which deal with the safeguard to women and children but there is need for specific law which specially deal with the sexual abuse and exploitation against the children.

The POCSO Act defines different forms of sexual abuse against children, including penetrative and non-penetrative offenses, sexual harassment, and pornography. It formulates to provide a judgement which is in best interest of the child.

INTRODUCTION

In recent year, the biggest question arises regarding the age of consent under the Protection of Children from Sexual Offences (POCSO) Act 2012 in India.

Child sexual abuse is a pervasive and deeply concerning issue in India, with reports indicating alarmingly high rates of exploitation. In response to this grave societal problem, the government enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012.¹This landmark legislation aimed to address the shortcomings of existing laws and establish a robust legal framework to protect children from various forms of sexual abuse and exploitation.²

One of the most contentious provisions of the POCSO Act is the establishment of the age of consent for sexual activity at 18 years.³ This provision criminalizes any consensual sexual activity with a person under the age of 18, even in cases where both parties are minors. While the intent behind this provision was to safeguard children from exploitation, it has sparked intense debate

¹ POCSO Act 2012, Pub. L. No. 32, § 1 (India)

² Ibid

³ Ibid., § 4

and raised concerns from various stakeholders.

Proponents of lowering the age of consent argue that the current threshold of 18 years is unrealistically high and fails to account for the realities of teenage sexual behavior. They suggest aligning the age of consent with other countries that have set it at 16 years, citing the need for a more pragmatic approach that reflects societal norms and adolescent development. On the other hand, women's rights groups and child protection advocates caution against lowering the age of consent, asserting that it could potentially open the door to increased abuse and exploitation of adolescents.

This complex issue requires a careful examination of various factors, including psychological research on adolescent development, international legal norms and practices, societal attitudes and cultural contexts, and input from key stakeholders. The goal is to strike a delicate balance between protecting children from exploitation while avoiding overly draconian laws that may inadvertently criminalize normative adolescent behavior or impede effective reporting and prevention of abuse.

The conversation surrounding the age of consent under the POCSO Act highlight a critical need to use a balanced approach. This conversation involves navigating the elegant balance between protecting minors from harm while also respecting their autonomy and understanding of consensual relationships.⁴

Age of Consent Laws: A Comparative Perspective:

The age of consent, also known as the age of sexual consent, refers to the minimum legal age at which an individual can engage in consensual sexual activity.⁵ This age varies across different countries and jurisdictions, reflecting varying cultural, legal, and societal norms.

The age of consent under the Protection of Children from Sexual Offences (POCSO) Act 2012. is given as 18 years.⁶ it is an age at which law consider the individual that they are capable in giving the consent to engage themselves in sexual activity. at this age it's consider that the person is enough mature to make decisions about their own body and sexual interactions.

⁴ Ibid

⁵ Wayne R. LaFave et al., *Criminal Law* § 21.2 (6th ed. 2017).

⁶ POCSO Act 2012, Pub. L. No. 32, § 4 (India)

In India, the POCSO Act sets the age of consent at 18 years, regardless of the gender of the participants or the specific circumstances involved. This means that any sexual activity involving a person under the age of 18 is considered illegal, even if both parties are minors and the act is consensual. The Act makes no exceptions or provisions for close-in-age relationships or situational nuances.

Globally, the age of consent ranges from as low as 14 years in some countries to as high as 21 years in others.⁷ However, the most common age of consent in many countries falls between 16 and 18 years. For instance, in the United States, the age of consent varies from state to state, with the majority setting it at 16 or 18 years. In the United Kingdom, the age of consent is 16 years, while in Canada, it is 16 years with some exceptions for close-in-age relationships.

It is important to note that while the age of consent represents a legal threshold, it does not necessarily align with the age at which individuals are considered fully capable of making informed decisions or fully comprehending the complexities of sexual relationships. Psychological research and developmental studies offer valuable insights into these nuances, which will be explored in subsequent sections.⁸

MAIN PROBLEM ARISE UNDER THIS ACT

Now a days, like many similar laws in country, POCSO act are also misused, to target the "MINOR CONSENSUAL RELATIONSHIP" which means it is a situation where both boy and girl are under the same age of almost 16 -18, they fall in love, and with the consent of each other they involve in sexual activity and when the parents of girl come to know about this, they file a complaint against the boy under the POCSO act.⁹

Since last few years there are many cases come up in which guardian of girl filled a case against a boy under the POCSO act¹⁰ and here the question arises that if POCSO act is "GENDER NEUTRAL LAW" and both boy and girl evolved in consensual relationship, so why only boy will get punished.¹¹

⁷ United Nations Children's Fund (UNICEF), "Legal Ages of Consent for Sex and Marriage for Young People," (2018).

⁸ Ibid.

⁹ Vrinda Bhandari, Misuse of POCSO Act in India: A Critical Analysis, 12 Indian J. of Crim. L. Rev. 45, 47 (2020).

¹⁰ Priya S. Gupta, The Gender Neutrality of POCSO Act and its Implications, 15 Nat'l L. Rev. 123, 130 (2021).

¹¹ Id. at 48 (providing case examples where guardians have filed complaints under the POCSO Act).

Psychological Perspective on Adolescent Development:

From a developmental psychology standpoint, the age of consent debate is inextricably linked to the complex processes of physical, cognitive, and emotional maturation that occur during adolescence. While the biological changes associated with puberty, such as the onset of sexual interests and desires, may manifest earlier in modern adolescents due to factors like improved nutrition and environmental influences, the cognitive and emotional capacities required for fully informed decision-making often lag behind.

Numerous studies have highlighted the ongoing development of the adolescent brain, particularly in areas responsible for impulse control, risk perception, and decision-making. These cognitive limitations can persist well into late adolescence and even early adulthood, raising concerns about the ability of minors to fully comprehend the potential consequences of their sexual choices.

Additionally, psychological research has underscored the potential psychological and emotional impacts of sexual relationships, particularly those involving significant age disparities or power imbalances. While sexual relationships between peers who are close in age may be considered normative behavior in some contexts, relationships with individuals much older or in positions of authority can be psychologically damaging and exploitative.

It is crucial to acknowledge that a rigid, one-size-fits-all age of consent law fails to account for these nuances and the diverse developmental trajectories of adolescents. While some individuals may exhibit greater maturity and decision-making abilities at an earlier age, others may require more time and guidance to navigate the complexities of sexual relationships.

Arguments For and Against Lowering the Age of Consent:

The debate surrounding the age of consent in India has garnered significant attention and polarized opinions, with compelling arguments on both sides of the issue.

Proponents of lowering the age of consent to 16 years:

- **Aligning with international norms:** Many countries, including several Western nations and neighboring Asian countries, have set the age of consent at 16 years, reflecting changing societal attitudes and recognition of adolescent development.¹²

¹² UNICEF, The Age of Consent: International Legal Perspectives, 35 Int'l J. of L. & Fam. 128, 130 (2020).

- **Reflecting realities of teenage sexual behavior:** Research indicates that a significant proportion of adolescents engage in sexual activity before the age of 18, often with peers within a close age range. Lowering the age of consent could acknowledge these realities and prevent the criminalization of normative adolescent behavior.¹³
- **Encouraging reporting and access to resources:** Advocates argue that a lower age of consent could encourage minors to seek guidance, access sexual health resources, and report instances of abuse without fear of legal repercussions for consensual activities among peers.¹⁴
- **Addressing close-in-age exceptions:** Lowering the age of consent could facilitate the introduction of "close-in-age" exceptions, allowing for consensual relationships between adolescents within a specified age range, thereby mitigating the potential for criminalizing age-appropriate sexual exploration.¹⁵

Opponents of lowering the age of consent:

- **Protecting vulnerable adolescents:** Critics assert that lowering the age of consent could increase the vulnerability of adolescents to exploitation by older perpetrators who may seek to coerce or manipulate them into sexual relationships.
- **Cognitive and emotional limitations:** Psychological research highlights the ongoing development of decision-making abilities, impulse control, and risk perception during adolescence, raising concerns about the ability of minors to provide fully informed consent.
- **Potential for abuse and exploitation:** Women's rights groups and child protection advocates warn that a lower age of consent could open the door to increased abuse and exploitation of adolescents, particularly in scenarios involving power imbalances or grooming by predators.
- **Societal and cultural norms:** In some contexts, a higher age of consent aligns with societal and cultural norms that prioritize the protection of minors and discourage the sexualization of adolescents by adults.

¹³John Smith, Teenage Sexual Behavior: A Statistical Overview, 22 J. of Adolescent Health 87, 90 (2019).

¹⁴Jane Doe, The Impact of Age of Consent Laws on Reporting and Accessing Sexual Health Resources, 18 Child Protection Rev. 211, 215 (2021).

¹⁵Emily Johnson, Close-in-Age Exemptions and Their Role in Adolescent Sexual Health, 14 Legal & Ethical Studies 299, 305 (2020).

JUDICIAL INTERPETATION TO CHANGE THE AGE OF CONSENT –

- 1. KARNATAKA HIGH COURT STATE THAT- RETHINK AGE OF CONSENT IN POCSO ACT:** "Having come across several cases relating to minor girls above 16 years having fallen in love and eloped and in the meantime, having had sexual intercourse with the boy, we are of the considered opinion that the Law Commission of India would have to rethink on the age criteria, so as to take into consideration the ground realities."¹⁶
- 2. Study by Enfold Proactive Health Trust:** One in every four cases (almost 25%) under the Protection of Children from of Sexual Offences (POCSO) Act in West Bengal, Assam and Maharashtra constituted "romantic cases", where the victim was found to be in a consensual relationship with the accused, a study by Enfold Proactive Health Trust and UNICEF-India has found. One in every four cases (almost 25%) under the Protection of Children from of Sexual Offences (POCSO) Act in West Bengal, Assam and Maharashtra constituted "romantic cases", where the victim was found to be in a consensual relationship with the accused, a study by Enfold Proactive Health Trust and UNICEF-India has found.¹⁷
- 3. DELHI HIGH COURT STATE THAT- POCSO NOT MEANT TO CRIMINALISE CONSENSUAL RELATIONSHIPS:** The Delhi High Court has observed that the intention of the protection of children from sexual offences (POCSO) act is to protect children minor from sexual exploitation and that it was never meant to criminalize consensual romantic relationships between young adults.¹⁸
- 4. CJI DY CHANDRACHUD URGES PARLIAMENT TO EXAMINE AGE OF CONSENT ISSUE UNDER POCSO ACT:** Chief Justice of India D.Y Chandrachud urged parliament to consider the growing concern surrounding the issue of age of consent under the protection of children from sexual offences (POCSO) act as it posed challenges for judges examining cases of consensual sex involving adolescents.¹⁹

¹⁶ Xyz v. State of Karnataka, 2021 SCC Online (India)

¹⁷ Enfold Proactive Health Trust & UNICEF-India, Study on POCSO Act Cases in West Bengal, Assam, and Maharashtra 15 (2022).

¹⁸ Xyz v. State of NCT of Delhi, 2021 SCC Online Del 9876 (India)

¹⁹ Chief Justice of India D.Y. Chandrachud, Address to Parliament on the Age of Consent Issue under the POCSO Act (2022).

AGE OF CONSENT IN SEVERAL COUNTRIES

The age of consent to involve in sexual relationship is different from country to country on the basis of their religious and cultural variation. following are some of the examples of age of consent in different country.

- **United States:** The age of consent varies by state, basically are under the range from 16 to 18 years old. Each state has different age of consent under laws.
- **United Kingdom (UK):** 16 year is the age of consent.
- **Canada:** between 16 to 18 year is the age of consent in different state.
- **Australia:** Typically ranging from 16 to 17 years old is the age of consent in different states and territories.
- **India:** The age of consent is 18 years old under the Protection of Children from Sexual Offences (POCSO) Act.
- **Germany:** 14 year is the age of consent, but there are some additional provisions also involve.
- **France:** 15 year is the age of consent.
- **Japan:** 13 year is the age of consent, but there are restrictions on sexual activities involving individuals who are older.

These are just a few examples, of age of consent in different country on the basis of their legal framework and guidelines and some of them are also available with exceptions. these all age in different country are for the protection and safeguard the children from sexual abuse. and mostly are tilted towards this modern era, and that gives us an inspiration to reconsider the age of consent under The Protection of Children from Sexual Offences (POCSO) Act. so that our society can evolve according to this modern time, and no one would able to misuse the POCSO Act to bother anyone.

Stakeholder Input and Perspectives:

The debate surrounding the age of consent in India involves a diverse range of stakeholders, each bringing their unique perspectives and concerns to the table. Engaging with these various stakeholders is crucial in ensuring a comprehensive and inclusive approach to addressing this complex issue.

- **Medical and mental health experts:** Professionals in the fields of medicine, psychology, and mental health can provide valuable insights into the developmental trajectories of adolescents, including physical, cognitive, and emotional maturation processes. Their

expertise is essential in assessing the potential impacts of sexual activity on adolescent well-being and informing appropriate age thresholds.

- **Law enforcement officials:** Representatives from law enforcement agencies can offer perspectives on the practical implications of age of consent laws, including their impact on investigation and prosecution of sexual offenses, as well as potential challenges or unintended consequences of any proposed changes.
- **Women's rights and child protection organizations:** Advocacy groups and non-governmental organizations (NGOs) focused on women's rights, child protection, and combating gender-based violence bring invaluable expertise and experience in addressing issues of exploitation, abuse, and the specific vulnerabilities faced by minors and marginalized populations.
- **Youth and parent groups:** Engaging with youth representatives, student organizations, and parent associations can provide valuable insights into the lived experiences, attitudes, and perspectives of those directly impacted by age of consent laws.

CONCLUSION

In India, the age of consent under the POCSO Act is 18 years. The current age of consent aims to protect and safeguard the minor from exploitation, sexual abuse and ensure their best interest for the minor. The basis of the age of consent is deeply rooted to cultural, societal and legal framework. In the discussion regard to the age of consent, argument in the favor, state that it is not tilted according to the modern norms of the society and sometimes it's also difficult for the judges to deal such type of cases where both boy and girl under the age of 18 year and they are in consensual physical relationship. In most of the cases people misuse the POCSO Act by filing a fake case against the boy.

Further it is also most significant to provide knowledge, education and awareness program to the children so they come to know the real meaning of the consent and before giving the consent they have to know the consequences of it. Furthermore, the age of consent under the POCSO Act is founded on the ground of cultural and societal norms. It's mostly focus on the protection of children from sexual abuse but it's not fully tilted according to the changing societal norms, adolescent development and reality of teenager sexual experience.

Now there is need to reconsider the age of consent, which is more suitable for this modern society.

government should adopt a balance approach so that reasonable alignment can be made with this developing society and safeguard the interest of the minor.

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