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# **ISSUES AND CHALLENGES ASSOCIATED WITH AGE OF CONSENT IN INDIA**

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## **Abstract**

Advocating sexuality for late adolescents in India is something that our social norms will disapprove of and given the reality of the deep-rooted taboo and the associated stigma the task of the researcher becomes further difficult. But everything cannot be seen from the perspective of one's own personal lives and to observe the appropriateness of any law one has to traverse the boundaries of the norms which a person themselves seeks to impose within its personal space. And then it is to see what can be done to prevent misuses of the laws which are happening already. Does the laws prescribing age of consent seem appropriate in that context has to be observed. The Ministry of Women and Child Development is credited with enactment of Protection of Children from Sexual Offences Act in the year 2012 (hereinafter 'POCSOA'). The Act has been a significant step in addressing sexual abuse and sexual exploitation of children. On a parallel note, in 2013 we have witnessed significant changes in the prevalent laws against Sexual Offences. These significant changes were brought in the backdrop of the Nirbhaya case and sweeping reforms were introduced therein. A significant change was introduced in the age of consent as enshrined under Sec. 375 of the Indian Penal Code, 1860. Before 2013, if the girl was above 16 years of age she was having a valid age to consent for sexual Intercourse. But the POCSOA which came into force 14th November, 2012 defined a child as a person below 18 years of age. This inherent conflict was finally resolved after 2013 amendment which rose the age of consent to 18 years in the Penal Code as well. This research paper will delve into the prior reasoning of keeping the age of consent at 16 years and what are the probable consequences and implications which the new laws have ushered in.

**Keywords:** Age of Consent, Autonomy, Child Sexual Abuse, Consensual Relationships.

## 1. Introduction

An important objective of this work is to emphasize the graded nature of childhood. This necessitates paying special attention to a unique case: children in their late adolescence. In this work, individuals aged between 16-18 years are referred to as “late adolescents” to fulfill this requirement. With introduction of the Protection of Children from Sexual Offences Act, 2012 (POCSOA), it was the establishment of a new paradigm in Child Protection Mechanism. The Act provided for a comprehensive regime of protection to the children by laying down the parameters of sexual offences against them. This included sexual assault, aggravated forms thereto, harassment, pornography etc. Before POCSOA, the cases of Child Sexual Abuses were covered by the Indian Penal Code, and the relevant provisions in Secs. 354 and 375 were accordingly amended in 2013 after the enactment of POCSOA. The Act penalizes penetrative as well as non-penetrative sexual assault and established a gender-neutral child protection regime by providing specialized penal law dealing upon the subject by filling the lacunas and gaps prevailing therein. Similarly, the definition of rape in the Penal Code was also expanded via the Criminal Law Amendment Act, 2013, and it included within its scope non-penetrative sexual assaults as well.

The POCSOA apart from penalizing different forms of sexual crimes against children also mandates reporting of any such incident to the police. It effectively rose the age of consent from 16 years to 18 years and thus any such incident against a child below eighteen years has to be mandatorily reported.<sup>1</sup>

In the global scenario it will be worthwhile to highlight the concept of ‘evolving legal capacity’ for the children. Under this regime it has been claimed that in the modern age the children can no more continued to be seen as vulnerable. There are debates which challenge the stereotypical notion of a child always being an object of protection and would therefore have no autonomy. Gradually the world is witnessing the challenges which have been posed upon such entrenched notions and the children are now seen as rights holder.<sup>2</sup> It will thus be very problematic to deny capacity to the late adolescents as far as their sexual and reproductive rights is concerned. The laws which seem to protect should not be used as a medium to disenfranchise them from access

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<sup>1</sup>Amita Pitre and Lakshmi Lingam, “Age of consent: challenges and contradictions of sexual violence laws in India” 29(2) *Sexual and Reproductive Health Matters* (2021).

<sup>2</sup> S. Varadan, “The Principle of Evolving Capacities under the UN Convention on the Rights of the Child” 27(2) *The International Journal of Children's Rights* 306-338 (2019). See also J. Tobin and S. Varadan, “Article 5: The Right to Parental Direction and Guidance and Consistent with a Child’s Evolving Capacities” in J. Tobin and P. Alston (eds.), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019).

to health services, which they would otherwise receive had been they given the capacity to consent on their sexuality.<sup>3</sup>

There was a paradoxical situation prior to the case of *Independent Thought v. Union of India*<sup>4</sup>, wherein a married girl child above the age of 15 years was treated competent to consent for sexual activity. However, this anomaly was lately resolved by the Supreme Court which read down Exception 2 to bring it in harmony with other laws which had risen the age of consent within marriage to 18 years as well. Therefore, it is very pertinent that the debates surrounding age of consent must be relooked by the Indian lawmaking agencies keeping in view the evolving capacities, autonomy, access to healthcare services, misuse of the existing laws, etc.<sup>5</sup>

## 2. Evolution of the Age of Consent

With advent of the British in India, there was this growing consciousness among the social reformers which was brewing. There were many social evils which had crept into the Indian society against which many reformers stood up. Among those social evils the child marriage was a prominent one. But due to the prevailing circumstances the original draft of the Indian Penal Code presented by Lord Macaulay had the age of consent at 10 years.<sup>6</sup> It was only through the effort of the reformers that it was increased to 12 years keeping in view the need to impose curbs on the social menace of child marriages.<sup>7</sup> The child marriages were quite prevalent in many regions and had serious impact on the wellbeing of the women. Their cause was well advocated by prominent socio-religious reform movements in India. However, the reforms movements were also occasioned by the presence of reactionary nationalists who claimed immunity from interference by British into the matters which are strictly personal.<sup>8</sup>

It will be pertinent here to highlight the difference between 'minimum age of marriage' vis-à-vis 'age of consent for sexual activity' and 'age of consent within marriage'. Sexual activity is basically an interpersonal conduct which can take place irrespective of the marital status.

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<sup>3</sup>Gerison Lansdown, "The Evolving Capacities of the Child" (UNICEF Innocenti Insights, Florence, 2005).

<sup>4</sup>(2017) 10 SCC 800.

<sup>5</sup>L. A. Mathew, "Right to Sexual Autonomy of Children - Implications of the UNCRC upon the Indian Law on the Age of Consent" 8(2) *International Journal for Crime, Justice and Social Democracy*, 121-134 (2019).

<sup>6</sup>E. Kolsky, "The rule of colonial indifference: rape on trial in early colonial India, 1805-57" 69(4) *The Journal of Asian Studies* (2010).

<sup>7</sup>C. H. Heimsath, "The origin and enactment of the Indian Age of Consent Bill, 1891" 21(4) *The Journal of Asian Studies* 491 (1962).

<sup>8</sup>T. Sarkar, "A prehistory of rights: the age of consent debate in colonial Bengal" 26(3) *Feminist Studies* (2000).

Marriage, however, places this interpersonal conduct within the framework of the norms of the society and the law. It is interesting to note that these phenomena have a very dynamic interaction inter se and the same have been gradually evolved over the time.

The reform movements were getting intense and it was only after the death of a female married child that the movement gained impetus and Age of Consent Bill, 1891 was proposed by the social reformers. Accommodating such proposal was thus made easier for the British as otherwise it would have been opposed by the reactionary elements which sought non-interference in personal matters.<sup>9</sup> Needless to say, that during those times the reforms prohibiting child marriage was not appreciated by a considerable section of the society as they considered their privilege to regulate their personal matters without any outside interference.

Thereafter, we see that the Child Marriage Restraint Act, 1929, which was passed on 28<sup>th</sup> September, 1929 ascertained the minimum age of marriage for girls at 14 years and for boys at 18 years. It is also popularly known as the Sarda Act, after the name of Harbilas Sharda. It was enforced on 1<sup>st</sup> April, 1930 and was a necessary outcome of the social reform movements in India. However, it was short of due implementation from the British Authorities as they feared losing support of loyalist communal groups.<sup>10</sup> Also, in the Penal Code there was exemption to the sexual activity which was within marriage, and the age of consent for those purposes was kept at 13 years.

After India's independence, the minimum age of marriage was further modified to 15 years for girls, and finally in 1978 it was further raised to 18 years for girls and 21 years for boys. The latter became the prevalent law which is effective until now. However, age of consent for sexual activity within marriage, which was kept slightly lower than the minimum age of marriage, was also gradually increasing. In 1978, the age of consent for sexual activity was retained at 16 years and the age of consent within marriage was 15 years.

The law relating to age of consent is remnant of the colonial legacy which witnessed women as a property. The idea of age of consent, the violation of which lead to statutory rape can be seen to

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<sup>9</sup> M. Kosambi, "Girl-brides and socio-legal change: age of consent bill (1891) controversy" 26(31-32) *Economic and Political Weekly*, 1857 (1991).

<sup>10</sup> L. Gulati, "Age of Marriage of Women and Population Growth: The Kerala Experience" 11 (31/33) *Economic and Political Weekly* 1225 (1976).

have evolved from the 13<sup>th</sup> Century England. From there, this law has accordingly been extended to other countries where there was influence of the British colonial regime. It was conceived as that age when the girl could consent for sexual activity without attracting any penal consequences and thus to be deemed as 'sexually available'. The primary aim was to protect the chastity of privileged and elite section of the women only and the protection did not extend to lower order and underprivileged sections of the women.<sup>11</sup> The same could be observed in the context of Uganda.<sup>12</sup>

The lawmakers have been challenged with the demands to harmonize the balance between 'age of consent', 'age of marriage' and 'age of consent within marriage' for a long time. The Law Commission of India's, Eighty Fourth Report<sup>13</sup> recommended increasing the age of consent to 18 years since marriage with a girl below 18 years was prohibited the same should be echoed in the rape law in the penal code. The same was echoed in 205<sup>th</sup> Report of the Law Commission of India<sup>14</sup>, which added further that the exception provided to the cases of marital rape in Penal Law should be deleted.

Marriage in India is witnessed by interplay of varied factors like caste, religion, class, family and so on. Early marriages stem from the need where the parents tend to maintain these social norms surrounding the marriage. Therefore, in order to prevent inter-caste or inter-religious marriages, the practice of tying the girl in a marriage was also intended to protect these rigid social norms from being flouted. The domination of the social norms upon the institution of marriage is very paramount.<sup>15</sup>

The Prohibition of Child Marriage Act, 2006 provides a minimum age of marriage at 18 years for girls and 21 years for boys. However, the violation of the prescribed age does not impinge upon the validity of such marriage and they are considered as voidable and could be set aside within

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<sup>11</sup> J. Benedet, "Age of innocence: a cautious defense of raising the age of consent in Canadian sexual assault law" 13(4) *New Criminal Law Review* 665-687 (2010).

<sup>12</sup> S. A. Parikh, "They arrested me for loving a schoolgirl: ethnography, HIV, and a feminist assessment of the age of consent law as a gender-based structural intervention in Uganda" 74(11) *Social Science and Medicine* 1774-1782 (2012).

<sup>13</sup> Law Commission of India, "84<sup>th</sup> Report on Rape and allied offences: Some questions of Substantive Law, Procedure and Evidence" (April, 1980).

<sup>14</sup> Law Commission of India, "205<sup>th</sup> Report on Proposal to Amend The Prohibition of Child Marriage Act, 2006 and other Allied Laws" (February, 2008).

<sup>15</sup> A. Loomba, "Inter-caste marriage and the liberal imagination: Vijay Tendulkar's *Kanyadaan*" 48(43) *Economic and Political Weekly* 101-111 (2013).

two years when the contracting party attains majority. The situation becomes problematic when the existing framework of the Penal Law, The POCSOA, Child Marriage framework, has been misused only because the social norms upheld by the parents don't approve of the choices made by their children as far as their sexuality is concerned. Most of the elopement cases are seen where the parents approach the authorities to prevent violation of such laws and prevent the marriages from happening.<sup>16</sup> Moreover, POCSOA Cases initiated against the boy in consensual cases which later turn sour due to any reason.

### 3. Criminalization of Consensual Relation in Late Adolescents

With changing times, it must be acknowledged by the society that children start exploring their sexuality in their late adolescence. The National Family Health Survey-4 has stated that roughly 39% of the girls reported having sexual intercourse before the age of 18 years.<sup>17</sup> Another study conducted by International Institute of Population Sciences highlights the high probability of increased sexual activity in the late adolescents.<sup>18</sup> Similar studies have been highlighted at the International level as well.<sup>19</sup> However, due to the associated taboo and stigma the issues do not properly surface themselves up for a healthy discussion. This further leads to ignorance, misuse of the legal provisions, gender biases, and patriarchal mindsets, denial of healthcare to children. It will be worthwhile to acknowledge NCRB data of 2015 where more than 50% of cases registered under Sec. 4 and Sec. 6 of the POCSOA were related to adolescents aged between 16 to 18 years.<sup>20</sup> In the recent 2019 report<sup>21</sup> out of 24672 cases recorded all over India, 12834 accounted for Family Friends, Neighbors, and Other Known Persons.

The most significant contribution here is the study conducted by Centre for Child and the Law, National Law School of India University, in five states.<sup>22</sup> It has provided shocking revelations as far as criminalization of romantic relationships under POCSOA is concerned. It is stated that most

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<sup>16</sup> M. Mehra and A. Nundy, *Why girls run away to marry: adolescent realities and socio-legal responses in India* (Partners for Law in Development, New Delhi, 2020).

<sup>17</sup> International Institute of Population Sciences, "National Family Health Survey 4 (NFHS – 4)" (2015).

<sup>18</sup> International Institute of Population Sciences, "Youth in India: situation and needs 2006–2007" (2009).

<sup>19</sup> S. Petroni, M. Das, S. M. Sawyer, "Protection versus rights: age of marriage versus age of sexual consent" 3(4) *The Lancet Child & Adolescent Health* (2019): According to UNICEF's estimate 10-12% of adolescents in low- and middle-income countries have had sex before the age of 15 years.

<sup>20</sup> National Crime Records Bureau, *Crime in India 2015 statistics*, New Delhi: National Crime Records Bureau, 2015.

<sup>21</sup> National Crime Records Bureau, "Crime in India 2019 statistics" (2019).

<sup>22</sup> Centre for Child and the Law, National Law School of India University, "Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues Based on CCL-NLSIU's Studies on the Working of Special Courts in Five States" (February, 2018).

of the cases comprised of consensual relationships which later turned sour or wherein the parents of the girl have dragged the accused to the court as they didn't approve of the concerned relation. In Delhi, 21.58% judgments analyzed were 'romantic' cases<sup>23</sup>, similarly, in Maharashtra 20.52%<sup>24</sup>, in Andhra Pradesh 21.21%<sup>25</sup>, in Assam, 15.69%<sup>26</sup>, lastly, in Karnataka, 5.45%<sup>27</sup> cases were 'romantic' in nature.

Another glaring observation made in the combined study was that in cases of such romantic relationships the Special Courts of Delhi, Maharashtra and Andhra Pradesh adopted a lenient approach of numerous forms. Moreover, the conviction rate in cases related to such consensual sexual acts poses another challenge, when disconnect between the letter and spirit of POCSOA is accordingly noticed. The rates have been very low, for example 3% in Maharashtra and 0% in Assam. Many cases reveal circumstances where the victims overturned from their statements made earlier and also refused to testify against their partner.

In the Delhi Report it has been flagged that majority of the cases seemed to indicate a romantic relationship. This study documented a total of 526 complaints of sexual assault under POCSOA. 28% of them were related to adolescents in 16 – 18 years age group. Quite interestingly, 90% of these complaints resulted in an acquittal after the adolescent girl rejected to testify against the accused. 10% of adolescent girls testified that the accused was their boyfriend and another 7% testified that the accused was a friend. The profile study of the accused revealed that 19% of such cases resulted in subsequent marriage. This in turn may indicate the misuse of POCSOA in relations which turned sour.

In the Maharashtra Report, out of the concerned 273 cases of consensual relations more than 60% of cases were concerned with victims aged between 16 to 18 years.<sup>28</sup> This again calls for relook of special cases where the parties are at later adolescent stages.

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<sup>23</sup> Centre for Child and the Law, National Law School of India University "Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi" (2016). (Hereinafter as 'Delhi Report').

<sup>24</sup> Centre for Child and the Law, National Law School of India University "Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra" (2017). (Hereinafter as 'Maharashtra Report').

<sup>25</sup> Centre for Child and the Law, National Law School of India University "Study on the Working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh" (2017). (Hereinafter as 'Andhra Pradesh Report').

<sup>26</sup> Centre for Child and the Law, National Law School of India University "Study on the Working of Special Courts under the POCSO Act, 2012 in Assam" (2017) (Hereinafter as 'Assam Report').

<sup>27</sup> Centre for Child and the Law, National Law School of India University "Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka" (2017). (Hereinafter as 'Karnataka Report').

<sup>28</sup> See Maharashtra Report, p. 39.

In a vast number of cases flagged in these reports it has been observed that testimony of the girl signified a consensual relation. However, in such cases even if the girl is married her willingness and voluntariness does not have any significance since she is technically below the age of consent. In such cases there are instances as flagged in the 'Delhi Report' where the girl was subjected to undergo further harassment at the hands of investigating authorities and further procedural lapses was encountered.<sup>29</sup>

In many consensual cases of late adolescents, as highlighted in the Mumbai and Delhi Report, there were compromise. In other majority cases there was bail followed by an acquittal. Only few cases resulted in actual conviction. Another significant study highlights those parental restrictions on consensual relation reinforces marriage as an only option to the couple, for which they are seldom prepared. The stigma and social pressures leave no other option than marrying the partner.<sup>30</sup>

#### 4. Judicial Attitude towards Consensual Relations

Recently, Supreme Court was faced with adjudication of a case from Tamil Nadu, wherein an eighteen-year-old boy was accused of raping a seventeen-year-old schoolmate. It is reported that they were in a consensual relation, but later upon refusal of marriage proposal the girl allegedly implicated the boy.<sup>31</sup> Apex Court has decided to intervene in the matter and decide whether POCSO Act can be invoked to punish adolescents for consensual relationships which later turned unpleasant.

In yet another case of Bombay High Court, the issue received much media attention and several media reports were published on the issue.<sup>32</sup> In this case, the consenting minors were first cousins and were living together. The girl had informed her teacher about her consensual relation and upon that the teacher filed an FIR against the boy. After medical examination it was revealed that there were multiple sexual assaults but no external injury was discovered which suggested consensual act. The girl in her statement under Sec. 164 of CrPC, agreed to the fact that it was a consensual relation. But she had changed her statements twice after that. The Hon'ble High Court after

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<sup>29</sup> See Delhi Report, p. 107.

<sup>30</sup> Supra Note 16.

<sup>31</sup> "Supreme Court to study whether minors can be punished under POCSO for consensual sex", *The Hindu*, March 30, 2021.

<sup>32</sup> *Arhant Janardan Sunatakari v. The State of Maharashtra*, [Criminal Appeal No. 332 of 2020].

granting bail to the accused made a significant observation which was raised in many media reports:

*“Consensual sex between minors has been in a legal grey area because the consent given by minor is not considered to be a valid consent in eyes of law”.*

Similarly, in *Sabari v. Inspector of Police and Ors*,<sup>33</sup> the Madras High Court has suggested the following measures:

- “From our records, the analysis shows that majority of the cases are elopement cases registered under POCSO. Elopement cases have to be dealt separately since the cases are voluminous. Due to this, the actual cases of minor rape victims are not prioritized resulted in delays in rendering justice for the minor victims of rape.
- The Commission is of the view that the child marriage shall not be taken under POCSO, in some cases the honor killing is also be associated.
- If the boy and a girl belong to the same community then the whole villagers support the child marriage and no case is filed against them, but in the case of different communities’ case is made out against the boy which ends up with communal unrest.
- In case a boy and girl below 18 years elope, only the boy is punished which is detrimental against the natural justice for the boy.
- Offence by Juveniles to Juveniles sends an alarm to the society. Our analysis shows that the Juveniles are falling a prey to the environmental hazards and children are of deviant background hence rape crimes seem to be raging. It is said by Psychologist that if juvenile is a victim of abuse in any form will take revenge against society and in most cases they become the perpetrators of crime in the later dates.
- In cases where of adult commits crime against a minor should be dealt with severe punishments.
- In case of gang rape, if the Juvenile is one among the perpetrator the case has to be conducted on the recent amendment that he has to be treated as an adult in the designated court.
- The Child Welfare Committees and the District Child Welfare Officers have to play an important role in case of POCSO related matters but the department is silent about taking cognizance of POCSO Act or rules.

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<sup>33</sup>[Criminal Appeal No.490 of 2018].

- For better monitoring is ensured if adequate budget and staff have to be provided to bring awareness to this commission.
- Educative materials on POCSO can be circulated in schools to spread awareness among Teachers, Parents and Children and to media professionals.”

The Court additionally opined that the definition of “child” under Sec. 2 (d) of the POCSOA could be changed to 16 years instead of the current 18 years. The Justice J. S. Verma Committee Report<sup>34</sup> set up after the Nirbhaya Case recommend criminal law reforms to the Penal Law gave the same recommendation of restricting the criminalization of adolescent sex to 16 years or under in POCSOA, and continue the age of consent in Sec. 375. However, the legislature still went ahead and increased the age of consent to 18 years.

Thus, it is quite evident that the age of consent in POCSOA is more often misused in consensual cases and seems to uphold paternalistic stance of the parents than fulfilling its real gender-neutral objective for which it was enacted. There is problematic situation which questions the objective of POCSOA in this context. Did it connote a legislation to control the sexuality of the children or was it something which intended to curb the mischief of child sexual abuse? The distinction between these two has to be necessarily drawn.

## 5. The debate surrounding Close-in-age exemption

Pertinent here to state the recommendation of National Commission for Protection of Child Rights (hereinafter as ‘NCPCR’), which stated the incorporation of “close-in-age exemption” in order to rule out cases of non-penetrative assault between children aged above 12 years who are within an age gap of 2 years. In cases of penetrative sexual assault, the recommended exemption should be availed between children aged above 14 years who are within an age gap of 3 years.<sup>35</sup> Similar exemptions do exist in other jurisdictions like USA and Canada.<sup>36</sup>

Close-in-age exemption connotes that such consensual cases only where the age gap between the accused and the victim is very less, such cases are generally of elopement and should not attract

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<sup>34</sup> J. S. Verma, L. Seth, et.al., “Report of the Committee on Amendments to Criminal Law” Government of India, Committee on Amendments to Criminal Law, (January, 2013).

<sup>35</sup> National Commission for Protection of Child Rights (NCPCR), Protection of Children from Sexual Offences Bill, 2010, See Clause 3.

<sup>36</sup> See J. Benedet, “*The Age of Innocence: A Cautious Defence of Raising the Age of Consent in Canadian Sexual Assault Law*”, *The New Criminal Law Review: An International And Interdisciplinary Journal*, 2010.

penal consequences directed only against the boy. The Madras High Court in the earlier case had recommended the age gap of five years to be a standard to prevent older men from exploiting young girl child.

In a comparative study conducted by T. Nyibizi while arguing induction of such provisions in Rwandan law, he has examined the criminalization of adolescents who engage in consensual sexual relationships with a maximum age difference of three years. The study further elucidates on the tension between such criminalization and safeguarding the best interests of both the young individuals involved and any potential victims. The argument presented is that imposing penalties on individuals aged 18, 19, or 20, who are in consensual relationships with partners just three years younger (15, 16, or 17, respectively), lacks justification in terms of protecting these young individuals from the potential harms and hazards associated with sexual relationships. This approach is posited to inflict negative consequences on the accused, the alleged victim, and any offspring resulting from such relationships. The paper contends that adopting a close-in-age defense would be more appropriate in the context of Rwandan law, preventing the criminalization of consensual sexual activities among young individuals with an age gap of up to three years. To assess potential improvements, the study employs a combination of doctrinal analysis and a comparative study, examining how other countries have addressed similar issues.<sup>37</sup>

## **6. Mandatory reporting issue and healthcare access**

Another issue which complicates the matter is the mandatory reporting of any sexual activity below the age of consent. The authorities and even private citizen have to report any such activity to the authorities because any such activities even the cases of consensual relation fall under the blanket category of sexual assault. This leads to a situation where the girl who is a partner to the consensual relation would rather forego the healthcare services like contraception and medical termination in order to avoid reporting of such cases to law enforcement agencies. Even the healthcare service providers are under a fear of rendering healthcare access to such adolescents.<sup>38</sup> This makes the situation intensely problematic by impliedly denying sexual and reproductive healthcare.

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<sup>37</sup> T. NIYIBIZI, "Expanding The Close-in-Age Defence to Criminal Charges for Consensual Sexual Activity between Adolescents in Rwanda" *RWANDA LAW JOURNAL* 25 (2012).

<sup>38</sup> A. Strobe, R. Sarumi, *et. al.*, "A feminist critique of legal approaches to adolescent sexual and reproductive health rights in Eastern and Southern Africa: denial and divergence versus facilitation" 32(1) *Agenda* 76-86 (2018).

There are inherent ethical considerations surrounding mandatory reporting of sexual violence cases. The complexities and potential implications of making it mandatory for healthcare professionals to report incidents of sexual violence to legal authorities is grave. It is important to highlight the tension between upholding the rights and confidentiality of survivors while also fulfilling the responsibilities of reporting such cases. Scholarly works have explored the potential benefits and drawbacks of mandatory reporting, considering issues like retraumatization of survivors, consent, privacy, and the broader societal impact. They emphasize the importance of creating a comprehensive framework that respects the rights of survivors while also addressing the needs for justice and support. Thus, offering valuable insights into the multifaceted considerations that must be taken into account when designing policies.<sup>39</sup>

## 7. Conclusion

After analyzing the studies in this research work following observations can be submitted:

- Increasing the age of consent to 18 years after 2013 by ignoring the recommendations from J. S. Verma Committee Report has resulted in a problematic situation for the late adolescents who enter into consensual relations.
- In instances of such consensual relations of late adolescents the final result is acquittal and compromises in most of the cases. The Conviction rate is abysmally low.
- Keeping the age of consent at 18 years and imposing a blanket category of sexual assault within such category aggravates the issues concerning healthcare access.
- The courts have impliedly started recognizing the problematic issues in consensual relations and deal such cases with a lenient approach, this shows there is some lacunae in the present laws which cannot be made applicable in its full spirit.
- Foreign Jurisdictions have incorporated the concept of close-in-age exemption in the respective child protection mechanisms. There must be emphasis accorded to the NCPCR Bill.

Therefore, it will be safe to assume that if POCSOA and Rape Laws are continued in their current form, then this will be tantamount to strengthening of protectionist and patriarchal regime on adolescent sexuality. In such a scenario if its impact on the wellbeing and healthcare access is weighed, the same will seem to be unjustified and diverting from the original object of the POCSOA and Penal Law Reforms.

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<sup>39</sup> Jagadeesh, N., Padma Bhate-Deosthali, and Sangeeta Rege "Ethical concerns related to mandatory reporting of sexual violence" *2 Indian J Med Ethics* (2016).

Increasing the age of consent to 18 years without incorporating measures for consensual close-in-age cases, suffers from an erroneous belief that the same would curb the cases of sexual assault. There is a genuine need to draw the distinction between genuine cases of sexual assault and that of a consensual elopement case, in order to keep the spirit of our Penal Laws and Child Protection Mechanisms intact.

There are several flawed presumptions when the cases of consensual late adolescents are considered. These are as follows:

- Blanket categorization of any conduct as a sexual assault if the girl is below age of consent.
- Mandatory reporting of the consensual relations is for the benefit of adolescents.
- Patriarchal control upon the sexuality of the children serves their interest in the best way.
- There is convergence in the interests of the Justice System, the late adolescents and the Parents.

Therefore, it will be essential to roll back the age of consent to 16 years and provide a uniform change in the existing Penal Laws as well which impinges upon the sexuality and autonomy of the late adolescents. The Juvenile Justice System treats the adolescents between 16 – 18 years as adults and responsible for their actions but the Child Protection Mechanism and Penal Laws on the overlapping issues consider them incapable to consent on their sexuality.

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