

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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CRIMINALIZING ADOLESCENT RELATIONSHIPS IN INDIA: A CONSTITUTIONAL, CHILD RIGHTS AND SOCIO-LEGAL CRITIQUE OF THE POCSO REGIME

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Abstract

The Protection of Children from Sexual Offences Act, 2012 (POCSO) represents India's most comprehensive legislative attempt to combat sexual exploitation and abuse of children. While the Act has played a significant role in strengthening child protection, its rigid framework of blanket criminalization of all sexual activity involving persons below the age of eighteen has generated serious constitutional, social, and ethical concerns. In recent years, courts across India—culminating in the Supreme Court's intervention in *In Re: Right to Privacy of Adolescents*—have acknowledged the harmful consequences of prosecuting consensual, age-proximate adolescent relationships under POCSO. This article critically examines the evolution of age-of-consent laws in India, the objectives and operation of POCSO, judicial responses to its misuse, and its incompatibility with constitutional guarantees of dignity, privacy, and personal liberty. Drawing upon empirical data, international child-rights norms, and Law Commission recommendations, the article argues for a calibrated legal framework that distinguishes exploitative sexual offences from consensual adolescent intimacy and re-centres child protection within a rehabilitative, rights-based paradigm.

Keywords: Adolescents, POCSO Act, Age of Consent, Right to Privacy, Child Rights, Criminal Justice

1. Introduction

The regulation of sexuality has historically been one of the most contested domains of criminal law. When this regulation intersects with childhood and adolescence, the tension between protection and autonomy becomes particularly acute. Indian child-protection law, especially after the enactment of the Protection of Children from Sexual Offences Act, 2012, adopts an uncompromising stance: any sexual activity involving a person below eighteen years is criminal, irrespective of consent, age proximity, or the nature of the relationship.

While such an approach may appear justified in cases of coercion, trafficking, or abuse by adults, its application to consensual relationships between adolescents has produced deeply troubling outcomes. Young men have been incarcerated for prolonged periods; adolescent girls have been institutionalized in shelter homes against their wishes; and families have resorted to criminal law to police sexuality, caste boundaries, and honor. These realities have compelled courts, scholars, and child-rights practitioners to ask a fundamental question: Does blanket criminalization protect adolescents, or does it punish them for natural developmental behavior?

This consequence is aggravated by the mandatory reporting regime under Sections 19 to 21 of the POCSO Act, which compels teachers, doctors, and counsellors to report any sexual activity involving persons below eighteen years. Section 19(5) further enables production of the child before the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2015, often resulting in prolonged institutionalisation irrespective of the adolescent's wishes.

The issue has gained renewed constitutional salience following the Supreme Court's observations that adolescent sexuality cannot be viewed solely through a paternalistic lens and that child-protection systems must not become instruments of harm rather than care. This article situates this debate within constitutional law, child-rights jurisprudence, and socio-legal realities in India.

2. Historical Evolution of the Age of Consent in India

The age of consent in India has evolved through a complex interaction of colonial morality, social reform movements, and modern child-rights discourse.

The Age of Consent Act, 1891, enacted in response to the infamous Phulmoni Dasi case, fixed the age of consent at twelve years.¹ During the colonial period and well into the post-Independence era, the Indian Penal Code retained sixteen years as the threshold for consent in sexual offences.² Simultaneously, social-welfare legislation such as child-marriage

1. Age of Consent Act, No. 10 of 1891 (India).

2. Indian Penal Code, No. 45 of 1860, 375 (as it stood prior to the Criminal Law (Amendment) Act, 2013).

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

4. Law Comm'n of India, Report No. 283, Age of Consent under the Protection of Children from Sexual Offences Act, 2012 (Sept. 2023).

5. Protection of Children from Sexual Offences Act, No. 32 of 2012, Statement of Objects and Reasons, India.

laws prescribed higher ages, reflecting a distinction between criminal liability and social reform.

A decisive shift occurred in 2012 with the enactment of POCSO, which defined a “child” uniformly as any person below eighteen years and rendered consent legally irrelevant.³ This move was intended to provide a clear and stringent protective framework. However, it also erased long-standing legal distinctions that recognized varying degrees of maturity among adolescents.

The 22nd Law Commission of India, while declining to lower the age of consent, acknowledged that this shift has resulted in severe injustice in cases involving adolescents aged sixteen to eighteen engaged in consensual relationships.⁴

3. Objectives and Scheme of the POCSO Act, 2012

POCSO was enacted to address serious lacunae in existing criminal law relating to child sexual abuse. It introduced gender-neutral definitions of offences, mandatory reporting, child-friendly procedures, and special courts for speedy trial.⁵

However, the Act adopts a strict liability model, criminalizing all sexual acts involving children without recognizing consent or relational context. Sections 3 to 7 of the Act encompass a wide spectrum of conduct from touching to penetrative intercourse treating all as inherently exploitative when a child is involved.

However, it is necessary to clarify that the POCSO Act does not create absolute strict liability. Sections 29 and 30 of the Act introduce rebuttable presumptions regarding culpable mental state, thereby shifting the burden of proof but not eliminating it altogether. This statutory design assumes heightened vulnerability of children while still permitting the accused to rebut presumptions through evidence.

This legislative choice was premised on the assumption that children lack the capacity to consent and that any sexual activity involving them is necessarily abusive. While valid in cases involving adults and power imbalances, this assumption becomes problematic when applied to peer relationships among adolescents.

4. Theoretical Framework: Protection versus Autonomy

4.1 Evolving Capacities of the Child

International child-rights law recognizes that children's capacities develop progressively. Article 5 of the UN Convention on the Rights of the Child (CRC) obliges States to respect the evolving capacities of children to exercise their rights.⁶ A legal framework that treats a seventeen-year-old in the same manner as a six-year-old disregards this principle.

4.2 Constitutional Right to Privacy and Dignity

The Supreme Court's recognition of privacy as a fundamental right in *K.S. Puttaswamy v. Union of India* expanded constitutional protection to decisional autonomy, bodily integrity, and intimate relationships.⁷ Sexual choice lies at the core of personal liberty and dignity. Criminalizing consensual adolescent intimacy therefore raises serious constitutional concerns under Articles 14, 19, and 21.

4.3 Moral Panic and Patriarchal Control

Socio-legal scholarship explains the misuse of POCSO through the lens of moral panic, where law becomes a tool to enforce dominant social norms relating to sexuality, caste, and honour.⁸ Families frequently invoke kidnapping and POCSO provisions not to protect adolescents, but to punish relationships that transgress social boundaries.

5. Judicial Responses to Criminalization of Adolescent Relationships

High Courts across India have repeatedly expressed concern over the prosecution of consensual adolescent relationships under POCSO. Courts have observed that the Act is increasingly used to criminalize "romantic relationships" rather than to address sexual exploitation.⁹

6. Convention on the Rights of the Child art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3.

7. *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

8. See generally Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (3d ed. 2002) (explaining the concept of moral panic and its role in criminalization).

9. See, e.g., *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 2849 (India); *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 13169 (India).

10. *In Re: Right to Privacy of Adolescents*, Suo Motu Writ Petition (C) No. 3 of 2023, Supreme Court of India (judgment dated Aug. 20, 2024 & sentencing order 2025).

11. Swagata Raha & Anindita Pattanaik, *Criminalizing Consensual Adolescent Relationships under POCSO: An Empirical Study of Judicial Trends*, (unpublished study cited in *The Hindu*, July 16, 2025).

12. National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs, Gov't of India, 2024).

13. International Institute for Population Sciences (IIPS) & I.C.F., *National Family Health Survey (NFHS-5)*, 2019–21: India Report (2021).

The Supreme Court's judgment in *In Re: Right to Privacy of Adolescents* marks a significant constitutional intervention. While restoring the conviction on technical legal grounds, the Court refused to impose further imprisonment, recognizing that continued incarceration would devastate the adolescent mother and her child.¹⁰ The Court emphasized rehabilitation, systemic failure of child-protection mechanisms, and the need to re-examine how the law treats adolescent sexuality.

This judgment reflects a growing judicial acknowledgment that criminal law is an inadequate and often harmful tool for regulating adolescent intimacy.

6. Empirical Evidence and Data Analysis

Empirical studies corroborate judicial concerns. Analysis of thousands of POCSO judgments reveals that nearly one-fourth involve consensual adolescent relationships, with complainants frequently turning hostile during trial.¹¹

National Crime Records Bureau data shows low conviction rates under POCSO, indicating systemic over-criminalization rather than effective child protection.¹² Further, data from the National Family Health Survey demonstrates that adolescent pregnancy disproportionately affects rural, Scheduled Caste, and Scheduled Tribe populations, highlighting the intersection of criminal law with social vulnerability.¹³

7. Social and Ethical Consequences of Blanket Criminalization

7.1 Infantilization and Loss of Agency

By denying any legal recognition to adolescent consent, the law infantilizes young people and denies them agency over their bodies and relationships.

7.2 Gendered and Caste-Based Impact

Although gender-neutral in text, POCSO disproportionately affects adolescent boys, particularly from marginalized communities, while adolescent girls are rendered voiceless in legal proceedings.

7.3 Institutional and Psychological Harm

Institutionalization of adolescent girls in shelter homes often results in educational

disruption, stigma, and psychological trauma, defeating the protective purpose of the law.

8. Comparative and International Perspectives

Many jurisdictions recognize “close-in-age” or “Romeo and Juliet” exceptions that decriminalize consensual sexual activity between adolescents within a specified age gap. Such approaches aim to distinguish exploitation from peer intimacy.

The UN Committee on the Rights of the Child has expressly cautioned States against criminalizing consensual, age-proximate adolescent relationships, emphasizing that such criminalization violates children’s rights to dignity, privacy, and development.¹⁴

9. The Way Forward: Reforming Law and Policy

Meaningful reform must balance child protection with adolescent autonomy. Possible measures include:

- Introducing guided judicial discretion in sentencing where de facto consent exists.
- Creating close-in-age exemptions for adolescents aged sixteen to eighteen.
- Strengthening rehabilitative and welfare-oriented child-protection mechanisms.
- Expanding comprehensive sexuality education and counselling services.
- Ensuring data-driven policymaking and periodic legislative review.

10. Conclusion

The criminalization of all adolescent relationships under POCSO reflects an over-protective legal imagination that conflates vulnerability with incapacity. While the protection of children from sexual exploitation remains a constitutional imperative, the indiscriminate use of criminal law against consensual adolescent relationships undermines constitutional values of dignity, privacy, and equality. Judicial interventions, empirical evidence, and international norms collectively point towards the need for a nuanced, rights-based framework that protects children without criminalizing adolescence itself.

14. Comm. on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, 38–40, U.N. Doc. CRC/C/GC/20.