

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

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**LEX SCRIPTA MAGAZINE OF
LAW AND POLICY (VOL-4, ISSUE-1)**

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ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

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First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
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Phone: +91 98 11 66 62 16 (Vineet Sharma)

Printed in India @ New Delhi

ISSN: 2583-8725

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Strict Liability vs. Child Autonomy: Rethinking Consent in POCSO Law

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Strict Liability vs. Child Autonomy: Rethinking Consent in POCSO Law

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Abstract

A look at Strict Liability in relation to issues of Child Autonomy reports on the in-depth analysis of the legal structure which in many ways is very little flexible in issues related to sexual offenses against children in India. In 2012, the Protection of Children from Sexual Offences Act was passed which adopts a strict liability stand point that which puts out that age of consent for a child is not relevant in these cases thus which gives priority to protection which that of autonomy.

The study looks at the bases of strict liability within the POCSO framework and reports on its results in terms of issues which come up in the context of consensual relationships between teens. We look at statutory rules and how the courts have interpreted them which in turn brings to light the issues with the wide scale criminalization of all sexual activity that takes place between parties under the age of 18. Also, we see how this approach may in fact put at risk consensual action between adolescents and also what it does to the issue of minor's agency.

The dissertation which also looks at constitutional principles at large including personal liberty and dignity as per Article 21 as interpreted in landmark cases like that of Justice K.S. Puttaswamy (Retd. v. Union of India also looks at the issue of reconciliation between child protection and what we see as modern concepts of autonomy. Also, we see into comparative legal standpoints and international standards related to age of consent and juvenile justice.

Through the use of a doctrinal research approach which includes statutory interpretation, case law analysis and review of scholarly work we have looked at present legal framework's performance and we report that there is a great need to reevaluate the POCSO Act's black and white approach which doesn't differentiate between what is exploitative behavior and what is consensual between adults and adolescents.

The study reports that which is to put forth a complex legal framework which at the same time includes provisions for when the system is abused and also notes that the growth of minor's autonomy and capacity is a variable which must be taken into account. We see in this report a call for tuned in changes which may include the pro posal of close in age exceptions and also more room for judicial discretion which in turn we hope will bring about a more fair and balanced application of the law.

Keywords: *POCSO Act, Consent, Child Autonomy, Strict Liability, Adolescent Relationships, Criminal Law, India*

Introduction

Due to the fact that the Indian Penal Code did not go to an extent of penalizing specific forms of sexual abuse, the Protection of Children from Sexual Offences Act, 2012 known as POCSO or the Act came to existence. The Act defines a child as one who is below the age of eighteen years. This, when combined with substantive provisions of the Act, in effect makes any sexual contact between a minor and another criminal. The outcome of this is a fixed age rule of consent in this paper. The age of consent in this rule is unanimous, and there is only one age regardless of context and voluntariness. Being involved in sexual relations at this age is a crime.

The validity of the minor with reference to the so-called consent, notwithstanding the POCSO, is still legally unclear, which is recognized in the current literature. Following the same line of thinking this paper will discuss the judicial interpretations of the POCSO of the concept of consent and argue that various interpretations have resulted in unintentional consequences. Moreover, despite the literature discussing the overreach of the fixed rule and its effect on the independence of young adults, there is no overall framework of POCSO consent that will not only protect minors against exploitation but will also consider the ability of young adults to make informed consent. This is the gap that will be addressed in this paper¹.

The Rationale for Criminalising Consensual Relationships

Why does the law consider the age when making a decision on the consent of a person? The rationale of having a consent tied to the age is that a child has no mental capability to comprehend sex and therefore he/she is not able to make his/her competent consent. The meaning of the word competence in this case is useful to be looked into since the minor will only be permitted depending on the meaning of the word competence. Giving consent is different to actual giving consent. The term giving informed consent, having taken in information, understanding it and weighing it is rather broad in the sphere of psychology. Consent should have been demonstrated by children to have demonstrated maturity of judgement according to other similar definitions. The first sense of competence is the intrinsic ability to make an effective consent. Although they may not have the requisite base competence, a seven-year-old child can agree to a course of action. Research carried out by the Ministry of Women and Child Development in 2007 that resulted in the POCSO (POCSO research) describes competence as the knowledge, experience and freedom to make rational decisions resulting in a sensible outcome. Moreover, it recognizes the possibility of underage persons having the mental capacity to give an informed consent. POCSO continues to criminalize all sexual acts that involve a minor. Even relationships where the two spouses are free of choice are not spared. What place does such homogenous criminalization have within the grand scheme of things? There are two significant policy justifications that can be analyzed².

First of all, there is the protectionist reason why this criminalization is necessary. Even in cases when the juvenile willingly enters into a relationship, one may find it hard to find out whether the juvenile is fit to be in a relationship. Adults in power positions can manipulate the maturity deficiency of a child to enjoy what they term consent of the young people. The fears regarding spreading abusive or exploitative relationships are caused by the fact that, even in the situations when consent is not being manipulated artificially, minors are not as competent as adults. In essence, permission of a minor is not permitted to be informed. To prevent the eventuality of underage individuals having a mental insufficiency to competently give informed consent, the law criminalizes any sexual activity under the age of eighteen. And secondly, since the latter is subject to abuse, a pre-facto norm of consent what the set age rule in the POCSO is is far superior. The POCSO legislators were aware of the potential adverse effects of making consensual intimacy between young adults a crime. They learnt that in case the sexual behavior prior to the age of eighteen was made criminal, it would expose the innocent young adults to the jurisdiction of the POCSO. Thus, the initial version of the POCSO recognized that minors that had the so-called capacity to consent could enter consenting relationships under the age between sixteen and eighteen. The capacity was not a defined term and was left at the will of the courts. This clause was however abandoned in the last text. The lawmakers were cautious

¹ SNEHA ROY, "POCSO: Critical Analysis of Consent Provisions", 12 JETIR A655 (2024).

² NLSIU FORUM, "Response Paper to 'Reconceptualising Rape in Law Reform'", *Student Law Review Forum* (Aug. 15, 2025)

of allowing a provision through which the actions of the victim could be subjected to court testing in case the capacity of the minor was to be tested. This would involve re-victimizing the victim and hence they were concerned about this. In an attempt to rephrase, the POCSO lawmakers decided to adopt an ex-ante norm as they believed that such a norm would be counterproductive in the case where the courts would adopt ex-post capacity requirement. These two reasons are based on legitimate concerns. However, it is argued that the existing system of laws has many loopholes in the context of partnerships between young adults³.

Historical Background of the Age of Consent

Child marriage is common in India and it is acceptable in the Hindu and Muslim societies. Therefore, age of consent is not a concept. This idea was brought about by Britishers after the revolt of 1857. The more the British power and influence rose, the more they started to introduce a number of reforms in India.

They passed the Age of Consent law in 1861 where 10 years are established as the legal age of establishing any sexual relationship. The orthodox Hindus were against it though they insisted to increase this age to 12 years on the basis that it contravened their own norms known as GARBHADHAN.

Pre-Independence

Legal frameworks regarding the consent and strict liability of child sexual offenses that were in place during the pre-independence era of India were mainly influenced by the laws of the British colonies, which were based on the Bharatiya Nyaya Sanhita, 2023. Section 63 of the BNS defined rape where the age of consent was 10 years in the case of girls and whereby sexual intercourse below the age of 10 years of age was considered rape irrespective of consent; this was early strict liability of statutory rape. This clause mirrored the Victorian moral codes of the Indian society where consent of girls below the age of 10 was not possible because they were assumed to be incapacitated and no action was criminalized in those who consent in acts of 10 years or above despite being forcible which indicated very little protection.

The origins of the framework can be traced to the drafting of the framework by Lord Macaulay who was influenced by the English common law but was modified in the colonial governance. Strict liability was applied strictly to children under-10s, and no mens rea was required; to be convicted one simply had to prove that they were under-10s and that penetration had occurred. Marital exemptions also weakened the protection: husbands were not prosecuted of rape of wives over 10 years of age, which were based on patriarchal values that condoned child marriages. Articles 354 (outraging modesty) and 377 (unnatural offenses) offered supportive protection, but did not have child-specific consideration or consent assumptions, and frequently had to demonstrate intent.

Post-Independence

The legal system on consent and strict liability under the crimes against child sexual offences in India shifted in a child-focused regime after the independence which led to the POCSO Act, 2012. The IPC did not change the age of consent in Section 375 of 16 years (which had been increased to 14 years in 1940): intercourse with girls below the age of 16 years was treated as rape without any strict liability regardless of the presence of mens rea. Boys did not have the same protection; Section 377 was inclusive of sodomy but intentional. Wife age exemption to marital rape was still allowed 15+, which subjected young brides to abuse.

³ RAVI SHANKAR, "Role of Consent in Child Sexual Offences: Legal Standpoint under POCSO Act, 2012", LawFoyer (Feb. 12, 2025).

Child marriage was first reformed by the Hindu Marriage Act, 1955 (at minimum 15 years old, but this has been raised to 18 years old, after the 1978 amendment), though consent to sex was still not coupled. In 1980, the 84th Law Commission Report (1980) recommended its increase to 18, the age of marriage, because minors could not make informed decisions. Strict liability was strengthened in court: in *State of Haryana v. Pala Ram* (1998)⁴, the High Court of Punjab and Haryana declared minors unable to give valid consent, and acts that were seemingly consensual were considered statutory rape.

With the revolution of the POCSO Act, 2012, the term child took a different form, and it was defined as under the age of 18 (Section 2(1)(d)) and criminal acts committed without reference to consent. Penetrative sexual assault (Section 3) requires 10+ years imprisonment (Section 4), aggravated with life/death (Section 6). Sexual assault (Section 7) and harassment (Section 11) are no exception and each is strict liability the act which is proved by a child. Sections 29-30 establish rebuttable presumptions: commission of an offense and being culpably mentally responsible presumed.

It does not matter whether the consent was taken, even voluntary relations are subject to penalties, as it was stated in the case of *Independent Thought v. Union of India* (2017)⁵ where the exception of marriage between under-18 wives was struck. In 2013, the Criminal Law Amendment aligned the IPC Section 375 to the 18-year threshold of POCSO. Penalties were tightened by amendment in 2019: 20 years minimum under-16 penetrative assault, death in case of some aggravations.

The enforcement is strengthened through procedural innovations: mandatory reporting (Section 19), Special Courts with child-friendly trials (Sections 28-38), in-camera proceedings. Contrary to generality in pre-independence, POCSO is gender-neutral, and it explicitly includes boys. Issues such as adolescent romance prosecutions have also been encountered and debate on carve outs on Romeo- Juliet has been proposed but the strict liability persists to discourage exploitation. It is a constitutional necessity (Article 15(3) 21), which is reflected in the UNCRC ratification, and changes colonial patriarchy to protective absolutism.

Age of Consent in India Prior to POCSO Act, 2012

Age of consent is the age of the person at which marriage or sexual act is regarded as consent in the law. This is an age which is legally established, and at the moment, it is 18 years old because of the POCSO Act, 2012. Before the adoption of the POCSO Act, 2012, the concept of age of consent was undefined and it was adjusted by the Section 63 of the BNS, which refers to the crime of rape. Since rape was legally defined as a crime against women, age of consent only referred to females. The age below which consent was considered insignificant and any sexual intercourse was classified as statutory rape. Surprisingly, there was no specified age of consent in the male sex. Further, the IPC and the General Clauses Act of 1897 did not give a clear understanding of what the term child means.

The age of consent regarding the female has been subjected to a variety of changes over time as provided in Section 63 of the BNS that addresses the rape. It had been fixed at 10 years in 1860, but it was then raised to 12 years in 1891 by popular clamour in consequence of the Phulmoni case of 1889. After this, it was lifted to 14 years in 1925 and then to 16 years in 1940. Until the enactment of the POCSO Act in 2012, the age of consent of females remained 16 years, and there was no specified age of consent of males. Nevertheless, women and men were to be married at 18 and 21 years old respectively. The exemption in the marital rape under

⁴ *State of Haryana v. Pala Ram*, Civil Writ Petition No. 14165 of 2000.

⁵ *Independent Thought v. Union of India*, AIR 2017 SC 4904.

Section 375 has also experienced some changes whereby it was 10 years in 1860 up to 15 years in 2012⁶.

Emergence of the Pocso Act, 2012

India has a comprehensive law in the POCSO Act of 2012 that is to protect children against any form of sexual abuse. This act was enacted as per Article 15(3) of the constitution of India and it considers the best interest of the child which is any individual under the age of 18. The Preamble reminds of the necessity to protect the best interests of the child and provide him or her with the healthy, physical, emotional, intellectual, and social growth. The implementation of the POCSO Act of 2012 took place on November 14, 2012, due to the activities of different non-governmental organizations, activists, and the Ministry of Women and Child Development. It discusses seven forms of sexual offences, which are penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, use of a child in pornography, storing pornographic material with child, attempt/abetment, violation of the Section 72 of the Bharatiya Nyaya Sanhita (BNS), 2023, false complaints, failure to report, failure to

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) has been implemented with the main aim of protecting the children against sexual abuse and exploitation. The law is very important in child protection and is indicative of the State duty to protect the vulnerable. But with the evolving social reality, strict interpretation of the Act has caused a lot of legal and social controversy especially where there is consensual relationship between adolescents. This leads to a key question, which is, is the law with its current form doing enough to draw the line between exploitative behaviour and consensual adolescent behaviour? The rigid age-related paradigm of a child and the belief that any sex with a child is non-consensual is a grey zone where teen relations are falling. In this case, the question of consent comes out as a controversial one, which raises debates of human law rigidity as compared to a dynamic approach of moral, ethical and psychological interpretation of adolescent behaviour.

Nonetheless, its strict structure tends to make consensual love or sex between adolescents aged 16 to 18 years illegal, at which the biological maturity and psychological knowledge of sexuality start developing. Under a lot of rural and disadvantaged environments, young boys and girls will get into such relationships unknowingly of the serious legal consequences. This puts a scenario where the boys especially of low or marginalized backgrounds are prosecuted in rape and sexual assault cases even when the relationship between them was consensual and not by force. Under the pressure of the society to maintain honour, or politically, the law is used by families against each other, and as a result, devastating effects on the future of the boy. Although the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS) have some exemptions to marital sexual relations even in cases where the wife is under 18, POCSO ACT, 2012 has no such room to acknowledge the concept of adolescent consent. This contradiction is an opposition of law, biology and social reality⁷.

According to POCSO Act, 2012, anyone under the age of eighteen years is considered a child. The law assumes the legal fact that a minor cannot provide a valid sexual consent. Consequently, any sexual act in which a minor is involved will be an offence, whether there was a willingness or emotional connection or not. This model is indicative of a strict liability approach, in which the question of consent becomes irrelevant, in the case that the age has been

⁶ Law Commission of India, “283rd Report on Age of Consent under Protection of Children from Sexual Offences Act, 2012” (2023).

⁷ Law Commission of India, “283rd Report on Age of Consent under Protection of Children from Sexual Offences Act, 2012” (2023).

made. Although this strategy enhances child protection, it also restricts the discretion of the judicial system in the instances that are difficult to determine the facts.

The National Crime Records Bureau (NCRB) 2022 Report estimates that between 25 and 30 percent of POCSO incidences are consensual relationships between adolescents, commonly between boys of one caste or community and parents. This trend is an indication of the misuse of the law to instill societal standards instead of penalizing true predators.

2.6 LEGAL FRAMEWORK OF CONSENT UNDER THE POCSO ACT, 2012

In the Bharatiya Nyaya Sanhita (BNS), 2023, Section 63, consent has been defined as a free voluntary agreement. However, the POCSO Act, 2012, does not consider the consent when the individual is under the age of 18 years.

The definition of the person who is covered by Section 2(d) of the POCSO Act, 2012, as a child, is that any individual below the age of 18, and Section 3 to 10 criminalizes all sexual intercourse with a child regardless of his or her alleged consent.

The 18-year age limit was entrenched within the wider criminal law system through the Criminal Law (Amendment) Act, 2013. Another significant amendment in this Act was the changes in Section 375 of the Indian Penal Code (IPC) that defines rape and in which the age of consent was established up to 2012 at 16 years old. Trying to improve the legislation regarding sexual offences against women, the amendments particularly adjusted the IPC in Section 375 to the 18 years of age, which the POCSO Act mentioned, and thus provided the full protection against child sexual abuse. It was kept in the Bharatiya Nyaya Sanhita, 2023 section 63, definition of rape which incorporates sexual acts with or without consent provided the woman is under 18. The age of consent in India has changed much throughout its history: starting at 10 years (IPC 1860) drafted by Lord Thomas Babington Macaulay) and then 12 (Age of Consent Act, 1891) and 14 (IPC amendment, 1925), eventually 16 since 1949 until the POCSO Act increased it to 18. Notably, the age of consent differs with the minimum age of marriage which according to the Prohibition of Child Marriage Act, 2006 is 18 in females and 21 in males. They introduced a 2021 Amendment Bill, to increase the minimum age of females to 21, to achieve gender parity, but this is yet to be legalized.

In the case of *Independent Thought v. Union of India*, (2017)⁸, the Supreme Court interpreted the marital rape exception to 15-18-year-old girls, as one being opposite to the POCSO Act, 2012. The case presents an example of the court being eager to reconcile law with the norms of child protection, yet in the process, the court also contributed to the dispute on the criminalization of consensual sex between teenagers.

Judicial Trends in Safeguarding the Interest of the Child During Trial in Cases of Rape and Sex Abuse

Gurmit Singh and others vs. the State of Punjab

The numerous rules that the SC observed in this case include the following: The courts must not be influenced by minor inconsistencies or contradictions in the statement of the prosecutrix that are not fatal and not fatal enough to reject a credible prosecution case. They ought to instead look at the big picture of a case. The routine process of rape cases ought to be in a private trial; exceptional and unusual cases ought to be open to hearings. The privacy of the victim has to be maintained at all times during the investigation process. An instance of a female victim being sexually assaulted should be presided over by a female judge in case it is possible. This would enhance better evidence and ensure a fair trial as well as ensure that the process becomes more comfortable to the victims. Besides its hope and observation, the court

⁸ *Independent Thought v. Union of India*, AIR 2017 SC 4904.

in this case hopes that Parliament will take the time to put into consideration the arguments presented by the petitioner and pass appropriate legislation with due diligence⁹.

1. The body or face of the accused may be screened or otherwise shielded to not be seen by the victim or witnesses;
2. The Presiding Officer of the Court should be provided with the written report of the crime with the questions to be asked during the cross-examination on behalf of the accused which are relevant to the commission of the crime. A court presiding officer may pose non-disgraceful questions to a victim or a witness directly;
3. Child rape or abuse victims are supposed to be given sufficient breaks where necessary. Rajendra Medical College competes with Hiranath Misra College of medicine. This decision stood since one could not have a chance to interrogate the relevant witnesses. There is rumor that, some male students had entered a female hostel at night and sexually harassed female occupants. To identify the identity of the perpetrators, the investigating committee taped the testimonies of the girls when they gave them privately and subsequently relied on them during their case against the appellants. However, the appellants could not have the privilege of cross-examining the girls because of two reasons. First, this investigation was controlled by the committee of responsible people. Secondly, revealing the identities of the girls would have further embarrassing them.

Directions for Magistrates/Juvenile Justice Board/Legal Services Authority

The name of the prosecutor or the board and any directives issued by any other party in attendance should never be disclosed during prosecutions of human trafficking, which must be held in an open court. In such a manner, the victim is guaranteed that his or her identity will not be disclosed during the processes and the victim will not need to be afraid of being embarrassed. The law on the issue needs to be revised by studying the applicable provisions of the Indian Penal Code, the Immoral Traffic Prevention Act and the Juvenile Justice Act before launching any charges against the traffickers.

Under Section 327 of the Criminal Procedure Code, there is a strong requirement that the testimony of the kid should be taken on camera and the presence of translators in case the child does not understand the language used in the place of the crime committed. Special Courts or Boards ought to do as much as possible to provide a friendly and secure environment in which children will testify. Ideally, and should it be possible, there would be an older woman there that the child would respect and feel secure with. A long debate on the process that the Board should take in solving cases involving children took place in Himachal Pradesh High Court in Shimla¹⁰.

3. A Board may sit, notwithstanding that no member of the Board shall be present, and no order shall be made by the Board which will be void, simply by reason of the absence of any member at any stage of proceedings; but this does not mean that there shall not be at least two members present, including the principal Magistrate, at the time of the final disposal of the case.

Therefore, any case involving juvenile in conflict with law or child in conflict with law as it were can only be resolved conclusively by two members panel with the Principal Magistrate being one of the members who must be present during the resolution process. No individual Member, not including the Principal Magistrate, nor two persons, but the Principal Magistrate, can decide upon the subject. It is not necessary to state a source since it is well established that in the event that a Court undertakes the task of exercising a jurisdiction with which it has not exercised, its ruling is of no value.

⁹ Osofsky, Joy D, "The Impact of Violence on Children." 9(3) *The Future of Children, JSTOR* 33-49 (1999).

¹⁰ Osofsky, Joy D, "The Impact of Violence on Children." 9(3) *The Future of Children, JSTOR* 33-49 (1999).

This means that any order made by a court which lacks jurisdiction is null and void and may not be enforced nor may it be relied upon in any manner (e.g. it is not my deed as a foundation to a right) even where execution or collateral proceedings have already taken place. Such an organization cannot be said to have made decisions that can be considered coram non iudice. Taking this circumstance of the case into consideration, the Honorable Supreme Court arrived at the following conclusion in the case of Hasham Abbas Sayyad vs. Usman Abbas Sayyad and others:

Above all, we would like to know, whether it would be possible to nullify an order of a person, who does not have inherent authority. This is the direction it will take. Any order obtained by a Tribunal or Court and thereafter incapable of making decisions concerning that matter would be void on the ground of res judicata doctrine, the procedures principles of estoppel, waiver and the principles of acquiescence. The order issued by a court would be coram non iudice when the jurisdiction was absent. It is a norm to not give this any weight since it is a nullity¹¹.

Conclusion

The redefinition of consent in the POCSO Act framework eventually shows how the current paradigm of pure strict liability, which asserts that all sexual acts involving an individual under the age of eighteen are inherently exploitative is doctrinally excessive and normatively unpredictable as compared to the constitutional pledge of dignity, privacy and emerging freedom of adolescents. This is not the conclusion that the doctrinal and case-law analysis suggests, namely that the protective core of POCSO should be watersed down, but that the current configuration of the law has the effect of reducing all the variations of adolescent sexuality to the status of abuse, and thus, compromises the law itself and its own effectiveness, and necessitates a careful, autonomy-sensitive reworking of consent in the statutory framework.

The core of the current system is an age-based negation of consent: child is any individual under eighteen, and penetrative and non-penetrative sexual intercourse with a child is criminalized regardless of whether it is voluntary or not, circumstances or relative age. Parts on penetrative sexual assault, aggravated forms and sexual harassment work on a one-size-fits-all premise of necessarily abusive sexual contact between a child and adult, and assumptions such as Section 29 and the exception clause in Section 42A embed a paradigm where consent is presumed irrelevant to the law. Empirical observation and judicial experience however reveals that a significant percentage of POCSO prosecutions at present are based on consensual romance between teenagers and are usually precipitated by parental disapproval of an inter-caste or inter-faith decision as opposed to actual danger of sexual exploitation. It is not a mere aberration on the boundaries of doctrine between a statute written in terms of paradigmatic abuse and a law applied to relationships in which both parties perceive a loving and voluntary relationship but it is a structural issue which the law can no longer afford to neglect.

¹¹ Peter R Duff and Pamela R Ferguson (eds.), *Scottish Criminal Evidence Law: Current Developments and Future Trends* 67-96 (Edinburgh University Press, 2018).

Suggestions

1. The Evaluation of the Graduated Scale of Consent: The current dichotomy of younger adults below 18 (incompetent) and above 18 (competent) fails to recognize the psychological maturity of the older adolescents. A shift in doctrine towards a (so to speak) sliding scale of consent would acknowledge that a 17-year-old has an agency interest of much greater difference than that of a 7-year-old and allow the law to draw the distinction between exploitation and experimentation of peers without decreasing, in general, the age of majority.
2. An Exemption of the Close-in-Age or Romantic: It would prevent the criminalization of the romantic relationships between the adolescents because of the establishment of explicit exemption of sexual intercourse between minors within a similar age group (e.g. between two and four years between the ages of two teenagers). Under this improvement, the heavy machinery of POCSO Act will be applied on the real predators rather than those targeting the youth in the consensual and developmental milestones.
3. Reconcilable Section 19 and the Right to privacy: Section 19 of the POCSO Act dictates that all adolescents must report on the abuses they are victims of, which would create the chilling effect of deterrents that they need to seek the required reproductive healthcare or counseling services due to the fear of legal action of their partners. This would be complemented by a so-called Safe Harbor where the medical practitioners would not be pressured to disclose the consensual sex in older teens without any apparent indication that the sex is forced or there exists a strong power dynamic.
4. The Absolute Character of Strict Liability has to be Critiqued: The strict liability is required to safeguard the young population but the strict application of this law in the case of 16–18-year-olds overrides the constitutional right to privacy and autonomy. The interpretation of the doctrine should propose a refutable presumption in the incapacity of older minor to permit the court to consider the actuality of the relation and the presence of a factual agency against the termination of the minor testimony.
5. What to do about the Misuse of the Act of Social Policing: It has been empirically determined that POCSO has been misused by the parents in order to punish the elopements, or inter-caste and inter-religious couples. The revising of the Act should have some judicial directions which will not confuse the protection of a minor as a parental control measure to ensure that the Best Interests of the Child will not be muddled with the good or social sense of the guardians.

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