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Reconceptualising consent under the POCSO act, 2012: A doctrinal analysis of strict liability and child autonomy

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Reconceptualising consent under the POCSO act, 2012: A doctrinal analysis of strict liability and child autonomy

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Abstract

The study examines the doctrine of strict liability under the Protection of Children from Sexual Offences (POCSO) Act, 2012, and its impact on child autonomy in India. The POCSO Act adopts a strict liability approach whereby the consent of a minor is considered legally irrelevant in cases involving sexual offences. While the legislation was enacted to strengthen child protection, its rigid framework has raised significant concerns regarding consensual relationships among adolescents. The research critically analyzes the statutory provisions of the Act, judicial interpretations, and constitutional principles relating to personal liberty, dignity, and privacy under Article 21 of the Constitution of India. It particularly explores how the blanket criminalization of all sexual activity involving individuals below eighteen years may undermine adolescent autonomy and agency. The study also examines landmark judicial decisions, including Justice K.S. Puttaswamy (Retd.) v. Union of India, along with comparative international approaches to age of consent and juvenile justice. Using a doctrinal research methodology involving statutory interpretation, case law analysis, and review of scholarly literature, the study highlights the limitations of the existing legal framework. It argues that the current “one-size-fits-all” approach fails to distinguish between exploitative sexual conduct and consensual adolescent relationships. The research emphasizes the need for a balanced legal framework that simultaneously protects children from abuse while recognizing evolving capacities and autonomy of adolescents. The study concludes by recommending reforms such as introducing close-in-age exceptions and granting greater judicial discretion to ensure a fair, proportionate, and rights-oriented application of the POCSO Act.

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.

Research Gap

Existing studies on the Protection of Children from Sexual Offences (POCSO) Act, 2012 primarily focus on child protection, sexual abuse prevention, and procedural safeguards. However, limited research critically examines the conflict between the doctrine of strict liability under the Act and the evolving autonomy of adolescents in consensual relationships. There is a lack of comprehensive doctrinal analysis addressing how the blanket criminalization of consensual adolescent sexual activities may undermine constitutional principles of privacy, dignity, and personal liberty under Article 21. Further, insufficient attention has been given to comparative international approaches, close-in-age exceptions, and the need for judicial discretion in balancing child protection with adolescent autonomy. This study seeks to bridge these gaps by reconceptualizing consent within the framework of the POCSO Act, 2012.

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

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

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 analysed².

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 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

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

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.

After the torments of two little girls, RUKHAMA BAI and PHULMANI DASI. The former was a case on the issue of the conjugal rights. Rukhma bai, in this case, got married at the age of 11 years, yet she did not have to stay with her husband. At the age of 20 years, her husband sent her a legal notice to move in with him⁴. Nevertheless, she would not cohabit with him and argued that she married him when she was a child and she did not know him then. The latter was the death of a child bride of 10 years who was violently raped by her husband. Such incidences prompted the British Parliament to come up with a new Law that is the age of consent law, 1891, that increases the age of consent by two years (10) years to 12 years old on creating sexual relationships among all girls regardless of whether or not they are married.

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

³ Ravi Shankar, "Role of Consent in Child Sexual Offences: Legal Standpoint under POCSO Act, 2012", Law Foyer (2025).

⁴ T. Saroja Devi & N. Amuthalakshmi, "Historical Context of the Age of Consent and Marriage Laws" 5(3) *Indian Journal of Integrated Research in Law* 802 (2025).

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.

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)⁵, 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.

⁵ *State of Haryana v. Pala Ram*, Civil Writ Petition No. 14165 of 2000.

Evolution of the Concept of Age of Consent

In India, the age of consent has been experiencing gradual changes within the past century. Since it was as young as ten years in the late nineteenth century, the Age of Consent Act, 1891, made it twelve, followed by sixteen, in 1925, and 1940. Only following the Criminal Law (Amendment) Act, 2013 that was passed in the wake of the Nirbhaya case was the age of consent increased to eighteen. Although the reason behind this was to avoid exploitation of the minors specifically child marriages and trafficking, this legislative option overlooked the fact that consensual teenage relations do exist. Section 2(d) of POCSO Act, 2012, asserts that a child is any individual under the age of 18 years. Section 3 and Section 5 criminalise penetrative sexual assault and Section 7 criminalises sexual assault which are all applicable regardless of consent where the girl is below 18⁶. This model removes judicial discretion in the determination of voluntariness or maturity in cases concerning adolescents, and as such, consensual intimacy is equated with predatory assault. Critics have said that this change, despite good intentions, neglected the socio-cultural and biological realities of adolescence in India. In most societies, girls are married early after they reach their puberty age and the couple may start living together during their adolescence. The abrupt criminalisation of all consensual sex under the age of eighteen is not only counterintuitive to such practices, but also, criminals themselves, where in most situations adolescents are below the age of majority.

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.

Comprehensive Framework of BNS, 2023 Reforms

The Bharatiya Nyaya Sanhita (BNS), 2023, which takes effect on 1 July 2024, is a watershed in the criminal-law reform of India, its objectives, its historical context, its structural characteristics, the scope of its definition, and the provision of sexual offences that come with it constitute a cohesive framework of strict liability and irrelevance of consent in relation to minors. The BNS supersedes the

⁶ Susan H. Bitensky, "Introductory Note to Council of Europe Convention on The Protection of Children Against Sexual Exploitation and Sexual Abuse" 49(6) *International Legal Materials*, JSTOR 1663–82 (2010).

antiquated Indian Penal Code (IPC), 1860, codifying the offences, updating language and strengthening the protection of children and vulnerable people by re-perfecting the offences and improving procedural protections⁷. The IPC, 1860, which was formerly insufficient to combat the increasing wave of child-sexual abuse and digital exploitation, was ineffective in history. Its sexual-offence plan was divided into fragments with penile vaginal penetration being the main one and distracted by the age of consent of 16 and married wives aged above 15 being exempt. Cases based on consensual relations and disregarding grooming, power-imbalance, and incapacity of minors were also often dismissed by the courts. Boys were not granted any special protection and the hurdles of evidentiary protection, victim-shaming and delays blocked reporting. The BNS, 2023, addresses these gaps by re-constructing the sexual-offence schema on incapacity of children to consent, by criminalizing the under-18 victim by strict-liability-based offences.

The Romeo–Juliet Clause

There exists an exception in the statutory rape and child protection laws known as the Romeo-Juliet clause intended to protect the consensual sex between adolescents of similar age groups against criminal charges. The concept originated in the US as an opposition to the excessively enforced statutory rape statutes that failed to distinguish between abusive and adult-child relationships and healthy adolescent friendship. Such provisions do not undermine the age of consent, but they provide a special exception in situations that involve a minor age gap and the relationship is free of abuse, coercion and minor age difference. Quite on the contrary, any sex act involving a child under the age of eighteen is an offense according to the Indian Protection of Children against Sexual offences Act, 2012 (POCSO) that adheres to a strict liability framework and is not concerned with issues of consent, maturity, and age proximity. The harsh criminal penalties young people are subjected to are disproportional to the seriousness of their actions as the POCSO Act, 2012 is frequently applied in situations of romantic relationships between teenagers, both based on the empirical and judicial observations⁸.

Socio-Biological Realities and the Critique of Strict Liability Under POCSO

The POCSO Act with its legal standards is clashing with scientific knowledge of puberty. This is a more problematic matter. Developmental neuroscientists argue that there is a sensitive period to brain development in terms of learning rewards during adolescence. This is the time when the brain is most responsive to receiving motivational and social-emotional information. The turning point in

⁷ Attorney General for India v. Satish, (2022) 1 SCC 279: Overturns Kerala HC; "skin-to-skin" not always POCSO offence, but affirms strict liability sans consent.

⁸ Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012).

adolescence is the stimulation of the reward pathways in the brain abundant in dopamine by romantic love and sexual desire. This will cause goal-oriented motivations to develop and consequently affect global cognition. Teens can easily get through the first love experiences when they are provided with the right resources. This is the case even though the region of the brain that controls the process of inhibition, the prefrontal cortex, continues to expand. The legal presumption that everyone below the age of 18 years cannot agree because they do not have a meaningful capacity to agree ignores natural developmental path of social and affective development.

Additional evidence that law and social reality are in conflict with each other is empirical evidence of Indian courts. Studies point to the existence of many cases of post-traumatic stress disorder (PTSD) that are credited to the concept of romantic-based elopements rather than predatory assault. In the Karnataka court, there is data on complaints filed by POCSO, 49.1 percent of which were voluntary, according to the Karnataka court. Research conducted in such regions as Maharashtra and Delhi revealed that more than 20 percent of cases involved romantic situations. A victim feeling exploited is often not the primary reason behind the incidences, but the lack of approval of cross caste, community, or economic lines relationships. In this case, the law is turned into a moral policing weapon and instead of the young men being imprisoned, the act that they engage in is wholly consensual in nature.

The 283rd Report (2023) of the Law Commission of India suggests that non-exploitative consensual relationships are being criminalized as sexual assault by overwhelming evidence. Nevertheless, the Commission was not keen to adjust the age of consent arguing on concerns that the vulnerable adolescents will be exploited and child trafficking is one of the reasons why they will not touch the age of consent. However, the Commission suggested guided judicial discretion as an alternative sentencing provision which would permit judges to pass lighter sentences in which tacit approval in fact but not consent in law is apparent. This according to others is hardly addressing the core problem of criminalisation. The fact that the punishment was reduced after a lengthy trial is not compensated by the pain and suffering that the arrest and incarceration of the boy caused the girl, the relocation to a shelter, and the stigma of the criminal record the girl will carry all her life. The term process is punishment fits the bill well in this case⁹.

⁹ Kumari, Ved., “Juvenile Justice Bill 2014 – A Regressive Step” 56 (3) *Journal of the Indian Law Institute* 303-319 (2014).

Recommendations Introduced by the 22nd Law Commission Of India

As a solution to helping deliver justice to the adolescents and help decongest the courts, the 22 nd Law Commission of India in a report titled, Age of Consent under the Protection of Children against Sexual Offences Act, 2012, in its report, has given its recommendation as to be against the reduction of the age of consent under the POCSO Act, 2012, by reducing it to 16 The Commission put down a number of reasons as to why it made its recommendations:

1. They said that reducing the age of consent would pose more risks of child marriage, child prostitution and their exploitation. This would make the investigation of cases of sexual abuse on children more complicated to the investigative authorities.
2. They also explained that it would give a bad signal in the society that a minor can engage in sexual intercourse with adults, despite the fact that the relationship between them is consensual.
3. They said the lowering of age of consent would give a cover to those who coerce minor girls and even enhance marital rapes and child marriage.
4. In the instances, which appear to conflict with the rights of minors or adolescents, the Committee suggested that the government should offer certain guided judicial discretion or discretionary power to the judiciary. This would enable the judges to formulate a moderate law and administer justice in relation to safeguarding the child rights.
5. They also say that this discretionary authority of cutting back sentencing cannot be always utilized in any case; but it can be utilized in cases when the difference between the ages of the victim and the accused is less than 3 years old and when the mutual agreement is established.
6. The power can be used when no previous criminal record is established against the accused, the accused has good behavior after committing the crime, and there is no undue influence despite the fact that this will provide too much power to the judges, this will not serve fully its purpose which is justice to the accused, etc.

Gurmit Singh and others vs. the State of Punjab¹⁰

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

¹⁰ *Gurmit Singh and others vs. the State of Punjab*, 1996 AIR 1393.

as ensure that the process becomes more comfortable to the victims. Besides its hope and observation, the court 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 diligence¹¹. In such cases, the Court may adopt protective and sensitive procedures to ensure justice while safeguarding the dignity of victims. The body or face of the accused may be screened or otherwise shielded so that the victim or witnesses are not directly exposed to them. The Presiding Officer of the Court may be provided with a written report of the offence along with relevant questions for cross-examination on behalf of the accused, and may, where appropriate, directly put non-offensive and non-disgraceful questions to the victim or witnesses.

In cases involving child rape or abuse, victims must be given adequate breaks and a supportive environment during proceedings. This approach finds relevance in situations such as disputes between Rajendra Medical College and Hiranath Misra College of Medicine, where allegations arose that male student had entered a female hostel at night and sexually harassed its occupants. The investigating committee recorded the testimonies of the victims privately to protect their identities and relied upon them during proceedings. However, the accused were not permitted to cross-examine the victims, primarily because the inquiry was conducted by a responsible committee and disclosure of the victims' identities could have led to further embarrassment and trauma.

Sachin vs State of H.P.¹².

In this case, the court addressed the issue of handling situations where two separate FIRs arise from the same incident but contain conflicting statements. It observed that such circumstances require careful judicial scrutiny to ensure fairness in investigation and adjudication. Further, considering the nature of the charge under Section 376D of the Indian Penal Code, the court laid down key factors to be taken into account while deciding whether an accused should be granted bail. These include the gravity and specifics of the offence, the nature and quality of the evidence, and any circumstances unique to the accused. The court also emphasized assessing the likelihood of the accused appearing before the court or cooperating with the investigation, the possibility of tampering with witness testimony, and broader considerations concerning public interest and the interests of the State.

¹¹ Osofsky, Joy D, "The Impact of Violence on Children." 9(3) *The Future of Children*, JSTOR 33-49 (1999).

¹² *Sachin vs State of H.P.* (Bail) Petition No. 301 of 2024.

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 law¹³. However, it 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.

Findings of the Study

1. The study finds that the Protection of Children from Sexual Offences (POCSO) Act, 2012 adopts a strict liability approach where the consent of a minor is considered legally irrelevant, irrespective of the factual circumstances of the relationship.
2. The research reveals that the rigid application of the Act often leads to the criminalization of consensual adolescent relationships, particularly in cases involving teenagers close in age.
3. Judicial decisions demonstrate inconsistency in balancing child protection with adolescent autonomy, as courts frequently rely on strict statutory

¹³ V. Anchan, N. Janardhana & J.V.S. Kommu, "POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India" 43(2) *Indian Journal of Psychological Medicine* 158–162 (2021).

interpretation despite recognizing the consensual nature of certain relationships.

4. The study identifies that the present legal framework inadequately recognizes the evolving capacity, maturity, and autonomy of adolescents, thereby limiting their agency and decision-making rights.
5. It is observed that the blanket criminalization approach under the POCSO Act may conflict with constitutional principles of dignity, privacy, personal liberty, and bodily autonomy guaranteed under Article 21 of the Constitution of India.
6. Comparative analysis indicates that several foreign jurisdictions have adopted “close-in-age” exceptions and flexible age-of-consent standards to distinguish exploitative conduct from consensual adolescent relationships.
7. The research finds that the absence of judicial discretion under the Act creates practical and social challenges, including misuse of the law in family disputes and cases involving inter-caste or inter-religious relationships.
8. The study concludes that there is a need to reform the POCSO Act by introducing nuanced legal standards, close-in-age exemptions, and greater judicial flexibility to ensure a balanced approach between child protection and adolescent autonomy.

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 partners¹⁴. 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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